

The National Oceanic and Atmospheric Administration

National Environmental Policy Act Handbook



Version 1, March 2005

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Acknowledgements

We would like to gratefully acknowledge John Armor, of NOAA’s National Marine Sanctuary Office, for preparing the first draft of this Handbook during a detail to the Office of Program Planning and Integration. John was a tremendous asset in not only setting up the structure and content of this handbook, but also in creating the illustrative figures to assist in understanding the NEPA process. Additionally we would like to provide special thanks to Shelby Mendez and Cristi Reid of our Office of Program Planning and Integration for finalizing the handbook, editing figures, and inserting website links.

ACRONYMS AND ABBREVIATIONS

§§	Sections	MSA	Magnuson-Stevens Fishery Conservation and Management Act
AA	Assistant Administrator	NAO	NOAA Administrative Order
ANPR	Advanced Notice of Proposed Rulemaking	NEPA	National Environmental Policy Act
APA	Administrative Procedure Act	NHPA	National Historic Preservation Act
CE	Categorical Exclusion	NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
CEQ	Council on Environmental Quality	NMSA	National Marine Sanctuaries Act
CFR	Code of Federal Regulations	NMSP	National Marine Sanctuary Program
CZMA	Coastal Zone Management Act	NOA	Notice of Availability
DEIS	Draft Environmental Impact Statement	NOAA	National Oceanic and Atmospheric Administration
DOC	Department of Commerce	NOI	Notice of Intent
EA	Environmental Assessment	NOS	National Ocean Service
EFH	Essential Fish Habitat	OAR	Office of Oceanic and Atmospheric Research
EFP	Experimental Fishing Permits	OMB	Office of Management and Budget
e.g.	for example	OPA	Oil Pollution Act
EIS	Environmental Impact Statement	PPI	Office of Program Planning and Integration
EO	Executive Order	RFMC	Regional Fishery Management Council
EPA	Environmental Protection Agency	RFP	Request for Proposals
ESA	Endangered Species Act	ROD	Record of Decision
etc.	and so on	RPM	Responsible Program Manager
FEIS	Final Environmental Impact Statement	U.S.	United States
FMP	Fishery Management Plan	U.S.C.	United States Code
FONSI	Finding of No Significant Impact		
FR	Federal Register		
i.e.	that is		
MMPA	Marine Mammal Protection Act		
MPA	Marine Protected Area		

*Note that the use of “**NOAA NEPA Coordinator**” and “**NEPA Coordinator**” are used interchangeably and refer to the NOAA NEPA Coordinator in the Office of Program Planning and Integration at NOAA Headquarters. The NOAA NEPA Coordinator is not the same as the Regional NEPA Coordinator for NOAA Fisheries.*

*The use of “**Regional NMFS NEPA Coordinator**” refers to the Regional NEPA Coordinator for NOAA Fisheries.*

PURPOSE AND USE OF THIS HANDBOOK

Who this Handbook is Intended For

This handbook has been prepared by the National Oceanic and Atmospheric Administration (NOAA) National Environmental Policy Act (NEPA) Coordinator in the Office of Program Planning and Integration (PPI) as a tool for use by NOAA staff. It should be useful as well to applicants, contractors, tribal representatives, Regional Fisheries Management Councils, and others who may be involved in the NOAA NEPA process.

What this Handbook Does

This handbook describes NOAA directives, policies, and guidelines for implementing NEPA, Council for Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, and NOAA Administrative Order (NAO) 216-6. This handbook brings these legal requirements together and describes how to apply them to NOAA program areas. The handbook also presents and summarizes other related environmental laws and Executive Orders that should be addressed in a NEPA document. To ensure compliance and understanding of environmental regulations and policies, users should refer to the specific regulation and policy.

This handbook should be used as a guide to assist staff in preparing, reviewing, and processing environmental analyses pursuant to NEPA. This handbook is not binding on NOAA, other Federal agencies or individuals, and it is not intended to circumvent, modify, or replace applicable Federal law or regulations. Although this handbook was written with these various authorities in mind, if a conflict should be found between the handbook and these authorities, the authorities always take precedence. In the event NOAA does not follow this handbook when it prepares a NEPA document, it is important for NOAA to explain why the agency is deviating from the guidance.

The handbook describes, in practical terms, the steps to prepare, review, and process environmental analyses. This handbook uses, wherever possible, flowcharts and visual representations. The handbook does not describe every detailed step involved in NEPA. Each region or office may also have additional steps specific to them, this information is not described in the handbook. Ensure that all region and office processes are also followed when conducting the NEPA process.

This handbook cannot answer every question. There may be situations in the real world that may not fit “classic” NEPA definitions or situations. Regulatory, social, and political realities can complicate the application of NEPA to unusual situations. This handbook does not attempt to address every possible situation. However, it should be a useful starting point in any situation.

Modifying this Handbook

This handbook is intended to be a living document and will be reviewed periodically and modified to reflect changes in environmental and NOAA regulations and policies. Recommendations for modifications should be directed to the NOAA NEPA Coordinator Staff in PPI.

Please inform the NOAA NEPA Coordinator Staff if there are areas in the handbook that are not clear or not helpful. Revisions can occur any time there is an identified problem with the exiting text.

Always ensure the most recent version of this handbook is being used. Check with NOAA NEPA Coordinator Staff in PPI for the most recent version. The following list shows which version is currently in use and which versions are obsolete.

Version and Date	Status
Version 1, March 2005	Current

Note that throughout this handbook many regulations and references are underlined and in blue font color. These are hyperlinks and when the handbook is viewed on a computer these hyperlinks will direct you to the appropriate website of the regulation or reference.

1.0 INTRODUCTION

During the 1960's the environmental "Green Movement" began. Americans were becoming more aware of their surroundings and the importance of the environment. At this time, the United States Government began to recognize a need to take into consideration the effect Federal actions may have on the environment. As a result, President Nixon signed into law the National Environmental Policy Act (NEPA) on January 1, 1970, 42 U.S.C. §§ 4321-4347.

NEPA is the basic national charter for protecting the environment. NEPA applies to major Federal actions, and is the process for assessing and disclosing the impacts of those actions.

1.1 Background

The following is adapted from Council on Environmental Quality (CEQ) regulations ([40 CFR 1500.1](#)) as a summary of the purpose of NEPA:

NEPA is our basic national charter for protection of the environment...NEPA procedures ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. **Ultimately, of course, it is not better documents but better decisions that count.** NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

It is worth reiterating that NEPA is not an exercise in producing paperwork; nor is it merely procedural. Its primary goal is to foster better decision-making, decision-making that takes into account all of the environmental impacts of an action and involves the public in that decision-making.

Public involvement is an important part of NEPA. NEPA's success as an environmental disclosure and problem-solving law depends on full disclosure and open discussion. Public disclosure leads to government accountability for the environmental effects of Federal decisions. The NEPA review process is intended to disclose all pertinent facts and possibilities associated with Federal decisions, and to ensure that the public has the opportunity to comment and contribute to those decisions in an environmentally meaningful way.

2.0 THE WHATS, WHENs, AND WHOS OF NEPA

This section explains some of the basic concepts behind the NEPA process and will help NOAA staff determine how to ensure that the underlying purposes and policies of NEPA are addressed for all actions taken by NOAA.

2.1 What is NEPA and What does NOAA Have to do?

NEPA is a law that requires Federal agencies to consider environmental impacts during their decision-making for major Federal actions. The first thing to do is to decide if the action is subject to NEPA environmental review. Refer to Section 2.1.1 of this handbook to assist in this determination.

If the action is subject to NEPA review, then the environmental impacts must be documented at one of three levels of NEPA analysis:

- 1) By preparing a brief memorandum to the administrative record documenting that the activity qualifies for a **categorical exclusion (CE)**;
- 2) By preparing a concise **environmental assessment (EA)**, and, if appropriate, a Finding of No Significant Impact (FONSI); or
- 3) By preparing a detailed **environmental impact statement (EIS)**.

A **CE** applies if the proposed action falls within a category of actions that do not individually or cumulatively have a significant impact on the human environment. Significance is a measure of the intensity and the context of impacts of a major Federal action ([NAO 216-6 Section 4.01x](#)). CE categories are those that have been found to have no significant impact on the environment, and are documented in procedures adopted by a Federal agency. If an action qualifies for a CE, neither an EA nor an EIS is required.

An **EA** is a concise public document that briefly provides supporting reasons and analyses for determining whether to prepare an EIS or a FONSI. It also considers and selects measures for mitigating identified adverse environmental impacts.

An **EIS** is a detailed document assessing the environmental impacts of the proposed action. It includes a description of:

- Adverse environmental impacts that cannot be avoided if the proposal is implemented.
- Alternatives to the proposed action, including those that may avoid or mitigate potential adverse environmental impacts.
- The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.
- Irreversible or irretrievable commitments of resources that would be involved if the proposed action is implemented. Irreversible commitments are decisions affecting renewable resources such as soils, wetlands, and waterfowl habitat. Such decisions are considered irreversible because their implementation would affect a resource that has

deteriorated to the point that renewal can only occur over a long period of time. Irretrievable commitments of resources mean a loss of production or use of resources as a result of a decision.

In some circumstances a supplemental or programmatic EA or EIS can be prepared. These types of documents are described in detail in Sections 6.1 and 6.2 of this handbook.

2.1.1 Is the Action Subject to NEPA?

As a Federal agency, NOAA performs many activities in furtherance of its underlying goals and statutory mandates. Some of its activities have a clear-cut and direct impact on the environment, while others may have impacts that are less obvious. The following sections will help NOAA staff determine if a particular action is subject to NEPA review, and if so, the process to follow.

2.1.1.1 Major Federal Actions

Through NEPA, Congress requires Federal agencies to examine the impacts of “major Federal actions significantly affecting the quality of the human environment” in “a detailed statement” prepared by the responsible Federal official. For CEQ’s definition of major Federal action refer to [40 CFR 1508.18](#). In [NAO 216-6 Section 4.0m](#) NOAA defines a major Federal action as:

An activity, such as a plan, project or program, which may be fully or partially funded, regulated, conducted, or approved by a Federal agency. “Major” reinforces, but does not have a meaning independent of “significantly” as defined in section 4.01x. and 6.01 of [NAO 216-6](#). Major actions require preparation of an EA or EIS unless covered by a CE ([40 CFR 1508.18](#)). CEQ’s definition of “scope” regarding the type of actions, the alternatives considered, and the impacts of the action should be used to assist determinations of the type of document (EA or EIS) needed for NEPA compliance ([40 CFR 1508.25](#)).

Most of NOAA’s actions are considered to fall within the definition of a major Federal action and are, therefore, subject to NEPA. This does not mean, however, that a lengthy environmental analysis must be prepared for every action.

2.1.1.2 Examples of NOAA Actions

The following lists of NOAA actions are not all-inclusive. They are provided as guides to the types of actions that typically are, and are not, subject to NEPA.

NOAA actions that **ARE** usually subject to NEPA and require a CE, an EA, or an EIS include:

- The approval of fishery management plans (FMP) (and plan amendments) submitted to NOAA Fisheries by the regional fishery management councils (RFMCs) and those FMPs and amendments prepared directly by NOAA Fisheries.
- The development and revisions of sanctuary management plans.

- The issuance of permits or other forms of approval under various statutes including the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and National Marine Sanctuaries Act (NMSA).
- The issuance of permits or other forms of approval for fishing under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including Experimental Fishing Permits (EFP).
- The issuance of grants.
- Facility construction, maintenance, and repair either conducted directly by NOAA or through a grant or contract when the construction is for NOAA.
- Emergency actions such as implementing management or regulatory plans or amendments; implementing rules to protect threatened and endangered species; establishing restoration projects; or actions of an immediate nature.
- Natural resource restoration activities conducted either directly by NOAA staff or through a NOAA grant.
- Promulgation of rules.

NOAA actions that **ARE NOT** usually subject to NEPA (i.e., exempt) include:

- The issuance of non-binding recommendations for non-NOAA activities over which NOAA has no direct or indirect control or responsibility.
- The conduct of actions that are specifically exempted by legislation or have been found to be exempted through the judicial process (such as listing and delisting under Section 4(a) of the ESA).
- The conduct of civil or criminal enforcement actions whether administrative or judicial.

The difference between “Categorically Excluded” and “Exempt”

There is often a misunderstanding between the terms “categorically excluded” and “exempt.” **Categorical exclusion** refers to a set of defined NOAA actions that meet the definition of “major Federal action” in CEQ regulations and that NOAA has found, through past environmental analyses, to lack significant environmental impacts, both individually and cumulatively. NOAA actions that are categorically excluded are subject to NEPA and require a CE memorandum to the administrative record, but do not require the preparation of an EA or EIS.

An **exempt** activity is an activity conducted by NOAA that does not meet the definition of “major Federal action” in CEQ regulations. Examples of exempt activities are listed above.

2.2 When Should NOAA Staff Initiate the NEPA process?

As a general rule, NOAA programs should initiate the NEPA process as early as possible during the planning stages of an action. This will help ensure decisions related to the action are based on a true understanding of the associated environmental consequences. In cases that involve the issuance of a permit or grant, the NEPA process should begin as soon as NOAA receives the related request (or permit application). When NOAA is directly taking an action, generally the first step is to determine the appropriate level of NEPA analysis that will be required for that

particular action (refer to Section 3.0 of this handbook for more detail regarding this determination). This determination may change throughout the planning stages of a project as new information becomes available about the action and the environment in which it is proposed to be conducted. If necessary, a supplemental NEPA review document may need to be prepared depending on when in the process new information becomes available (refer to Section 6.1 for information regarding supplemental NEPA documents).

2.3 What are the Steps of the NEPA Process?

An overview of the general NEPA process is depicted in Figure 1.

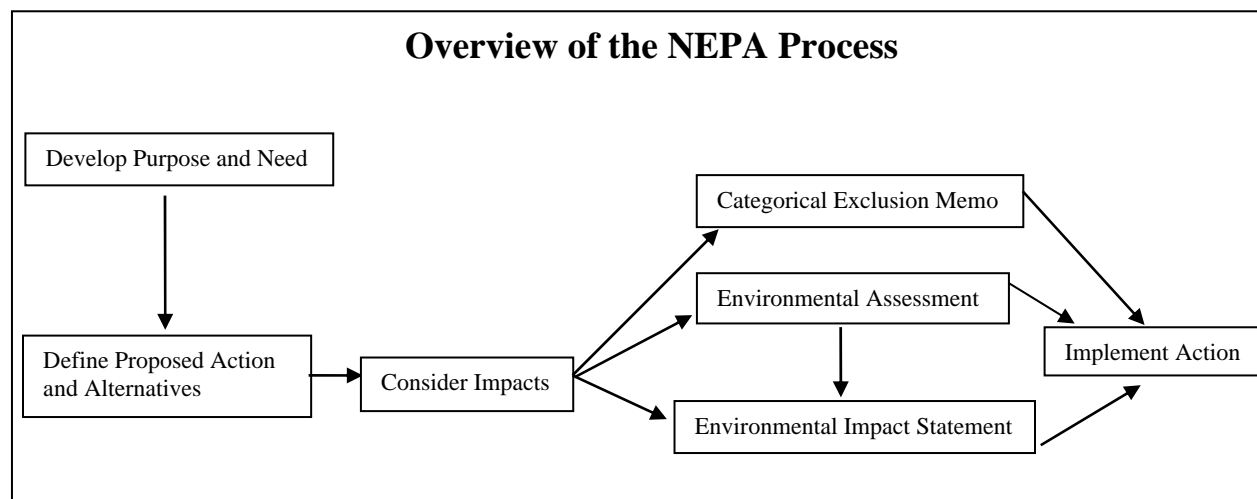


Figure 1. Overview of the NEPA Process.

The general steps of the NEPA process are:

1. Determine and define the purpose and need (why is the action needed?).
2. Define the action that will satisfy that need and identify potential alternatives.
3. Consider the environmental impacts of the action and alternatives.
4. Prepare the appropriate NEPA document:
 - a. CE
 - b. EA
 - c. EIS
5. Implement the proposed action or take no action.

2.4 How Long Will the NEPA Process Take?

The length of time to complete the NEPA process will vary depending on many factors, including:

1. The level of NEPA analyses required (CE, EA, or EIS).
2. The complexity, sensitivity, and controversy of the action.
3. The availability of resources to complete the analysis (staff or money for a contractor).

In general, CEs can be completed in a few days. EAs may take between two weeks to six months or more to complete. EISs preparation varies between eight months and two years. Figure 2 and Figure 3 depict estimated timelines for EAs and EISs, respectively. Each figure shows three different timelines: a minimum timeline, an average timeline, and a lengthy timeline. The stars depict a milestone, with reference to the number of days since initiation of the NEPA document. The bars show a period of time in days during which a particular process occurs.

2.4.1 Required Milestones

There are several required milestones that NOAA staff must be aware of during the NEPA process. These apply when the action is subject to an EIS. The most important requirement is that the appropriate NEPA analysis must take place BEFORE a decision on an action is taken. Other critical milestones are as follows:

- A notice of intent (NOI) to prepare an EIS should be published in the *Federal Register* with a minimum public comment period of 30 days before releasing a draft EIS (DEIS) ([NAO 216-6 Section 5.02d2](#)).
- A notice of availability (NOA) of a DEIS must be published in the *Federal Register*. The DEIS must be made available for review by the public and interested parties for a minimum public comment period of 45 days before releasing a final EIS (FEIS) ([40 CFR 1506.10\(c\)](#)).
- An NOA for an FEIS must be published in the *Federal Register* at least 30 days before issuing a record of decision (ROD) and taking the subject action (this is also known as the “cooling off” period) ([40 CFR 1506.10\(b\)\(2\)](#)).

The Environmental Protection Agency (EPA) publishes NOAs every Friday. The deadline for filing at EPA is 3:00 pm for publication in the *Federal Register* the following Friday. Five bound copies of the DEISs and FEISs are required by EPA headquarters at time of filing. An additional three bound copies should be sent to each affected EPA region office ([NAO 216-6 Section 5.04c3](#)).

2.4.2 Integrating NEPA Timelines with Other Requirements

To the extent possible, NEPA timelines should be integrated with other statutory (or court imposed) timelines under which NOAA operates (such as ESA and MSA). During the initial phases of planning an action, all applicable statutory mandates should be considered and the relevant timelines coordinated when possible. This should be done in a manner so that different statutory processes occur simultaneously, rather than sequentially. For example, CEQ regulations suggest that the DEIS be released concurrent with a proposed rule published pursuant to the Administrative Procedure Act ([40 CFR 1502.5\(d\)](#)). If the action is the preparation of a management plan, the draft management plan could be released concurrent with the DEIS and proposed rule, thus integrating three applicable statutory requirements. The DEIS and the draft management plan can also be integrated into one document. Planning in this manner reduces the overall time spent completing a project and reduces paperwork by combining several documents into one.

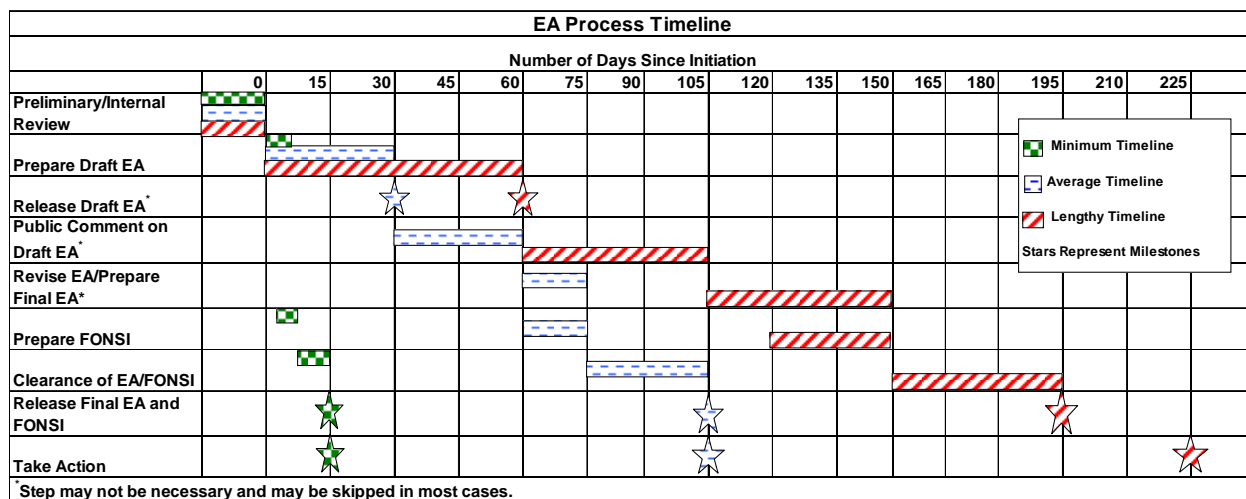


Figure 2. EA Process Timeline.

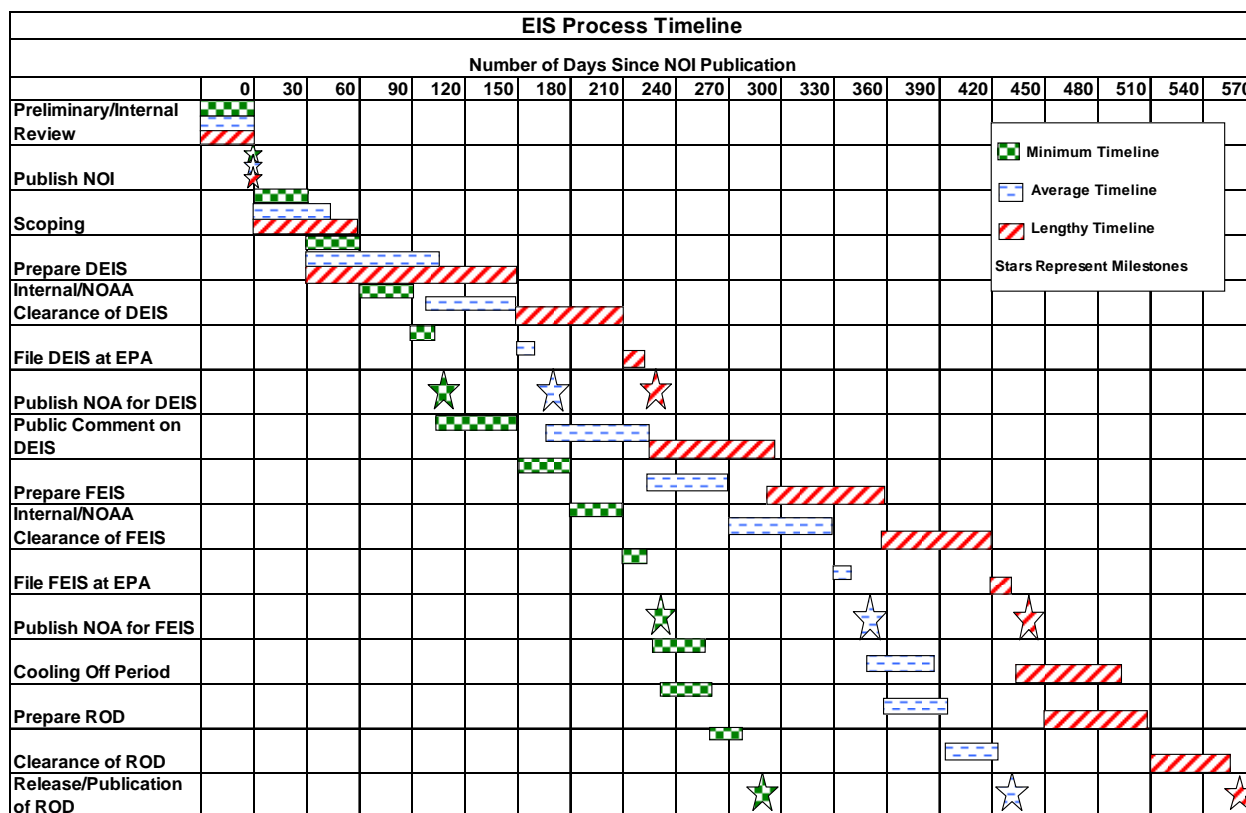


Figure 3. EIS Process Timeline.

2.5 Who Prepares NEPA Documents?

Several people and offices, including NOAA staff and/or contractors, may be involved at different levels in the preparation of NEPA documents. Some of these roles are defined in [NAO 216-6 Section 2.02](#). Major roles include:

1. **Proponent:** the office or program that is proposing the action.
2. **Project Manager:** the staff person either preparing or managing the analyses and documentation directly or managing a contractor who is preparing the analyses. In some cases, the project manager may work alone with minimal involvement by others. In other, more complex NEPA analyses, the project manager may lead or facilitate an interdisciplinary team.
3. **Responsible Program Manager (RPM):** the person responsible for the content of analyses and to whom comments are directed. Within NOAA, the RPM is typically a Regional Administrator (for NOAA Fisheries), a Science Center Director, a Laboratory Director, or a Program Director within a line, staff, or program office. This person is responsible for:
 - a) Determining if the proposed action is subject to NEPA.
 - b) Determining what level of NEPA analysis to conduct for the proposed action.
 - c) Carrying out the NEPA process in accordance with NAO 216-6, CEQ regulations, and other relevant statutes.
 - d) Ensuring the legal sufficiency of the analysis through timely coordination with the Office of General Counsel.
4. **Decision-maker:** the NOAA official responsible for making the decision regarding the action for which the analysis is prepared. This person is also responsible for verifying the adequacy of the NEPA documentation. This is generally the line office assistant administrator (AA) or staff office director who has either direct or delegated statutory authority for making a decision. The decision-maker is responsible for designating an RPM for each relevant action and coordinating between the RPM and the NOAA NEPA Coordinator.
5. **NOAA NEPA Coordinator:** is ultimately responsible for ensuring NEPA compliance within NOAA. The NOAA NEPA Coordinator:
 - a) Is responsible for ensuring that the decision-maker is advised on how to comply with NEPA.
 - b) Reviews and provides final clearance for all EAs and EISs.
 - c) Signs all transmittal letters for NEPA environmental review documents disseminated for public review.
 - d) Develops and recommends national policy, procedures, coordination actions or measures, technical administration, and training necessary to ensure NOAA's compliance with NEPA.
 - e) Acts as a liaison between NOAA and the CEQ, including consulting with CEQ on emergencies and making pre-decision referrals to CEQ.
 - f) Acts as a liaison with the EPA on NEPA matters.
 - g) Provides general guidance on preparation of NEPA documents, including:
 - i. approving criteria regarding the appropriate document to be prepared;

- ii. working with line, staff, and program offices and their designated RPMs to establish CEs;
 - iii. establishing and/or approving criteria to define “significance;”
 - iv. providing consultation, as requested;
 - v. coordinating NOAA’s comments on EISs prepared by other Federal agencies; and
 - vi. monitoring Department of Commerce activities for NEPA compliance.
6. ***Office of Program Planning and Integration:*** is responsible for ensuring NEPA compliance and providing guidance on NEPA. In addition to the NOAA NEPA Coordinator, PPI has other staff trained in NEPA that are responsible for:
- a) Advising NOAA staff on NEPA compliance.
 - b) Reviewing EAs and EISs prior to clearance.
 - c) Providing general guidance on NEPA documentation.
 - d) Providing training on NEPA.
 - e) Developing and recommending policies, procedures, coordination actions, and technical administration to ensure NEPA compliance.
 - f) Compiling and coordinating NOAA comments on other Federal agency NEPA documents.

Note that each region or office may have additional staff involved in the NEPA review process; refer to the region or office for information on additional roles and responsibilities.

3.0 DETERMINING THE PROPER NEPA DOCUMENT

Once a determination is made that the proposed action is subject to NEPA, the next step is to determine the level of documentation required.

Figure 4 and the following descriptions illustrate how NOAA staff should decide which type of NEPA document to prepare for each action.

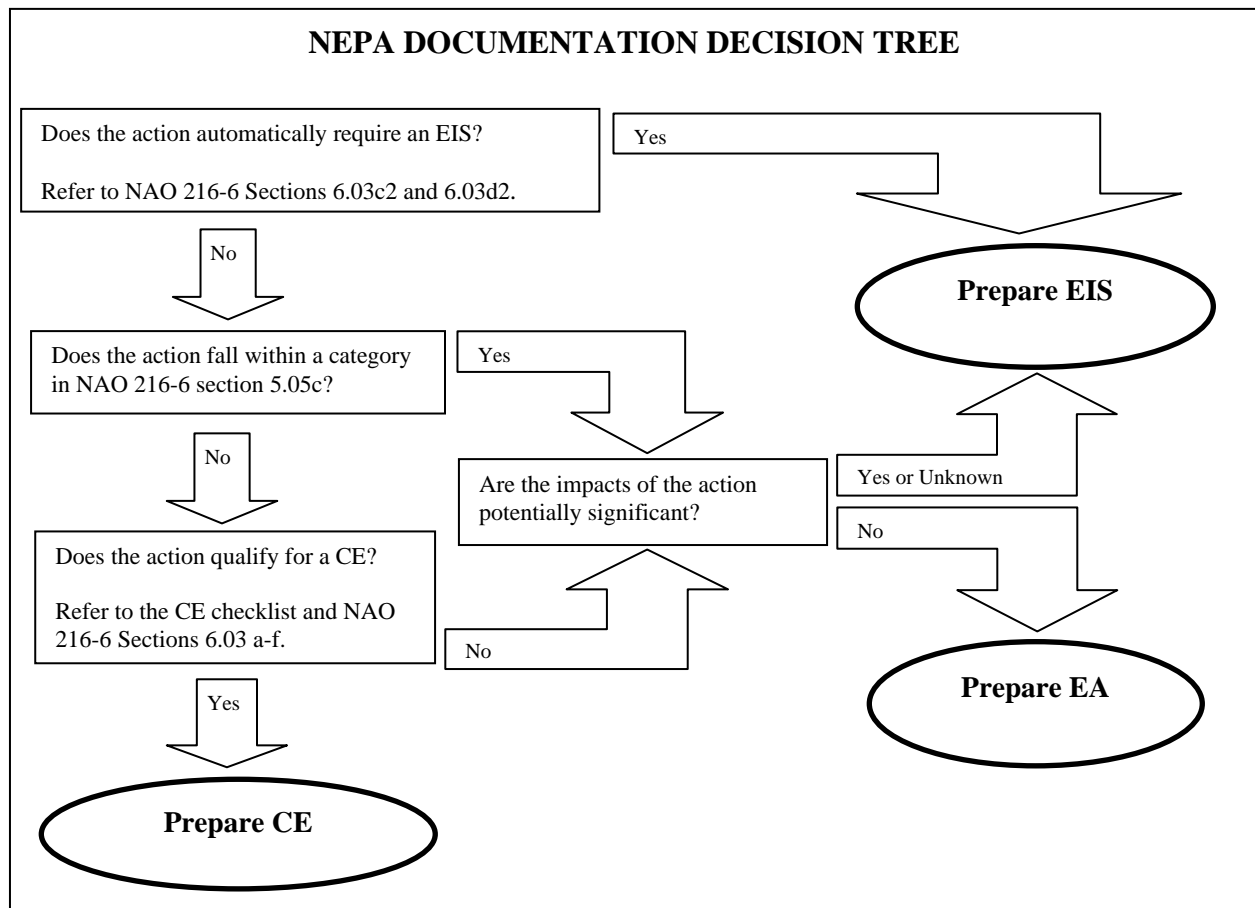


Figure 4. NEPA Documentation Decision Tree.

3.1 Is an EIS Automatically Required?

[NAO 216-6](#) lists types of NOAA actions that automatically require the preparation of an EIS. The following list of actions that require an EIS is compiled from two different parts of NAO 216-6. The first four types of actions apply to **all NOAA actions** and are listed in [NAO 216-6 Section 6.03c2](#). The last two types of actions apply **only to fishery management** actions taken under the MSA and are identified in [NAO 216-6 Section 6.03d2](#). These actions include:

1. Major new projects or programmatic actions that may significantly affect the quality of the human environment.

2. Actions required by law to be subject to an EIS.
3. Research projects, activities, and programs that:
 - a. are conducted in the natural environment on a scale at which substantial air masses are manipulated, substantial amounts of mineral resources are disturbed, substantial volumes of water are moved, or substantial amounts of wildlife habitats are disturbed;
 - b. would have a significant impact on the quality of the human environment either directly or indirectly;
 - c. is intended to form a major basis for development of future projects that would be considered major actions significantly affecting the environment under NAO 216-6; or
 - d. involve the use of highly toxic agents, pathogens, or non-native species in open systems.
4. Federal plans, studies, or reports prepared by NOAA that could determine the nature of future major actions to be undertaken by NOAA or other Federal agencies that would significantly affect the quality of the human environment.
5. The development of a new FMP for a previously unregulated species (*Note this applies only to fishery management actions*).
6. FMP amendments and regulatory actions when the RFMC or NOAA Fisheries determines that significant beneficial or adverse impacts are reasonably expected to occur (*Note this applies only to fishery management actions*).

The matching of a specific action with the activities listed above is not always straightforward. RPMs will need to use some interpretation of the items in this list and professional judgment to determine if an EIS is required. PPI and the Office of General Counsel are available to assist in making this determination.

3.2 Does the Action Qualify for a CE?

If an action does not require automatic preparation of an EIS (as described in Section 3.1), the RPM must determine if the action is categorically excluded. [NAO 216-6](#) provides a two-part test for determining if an action qualifies for a CE. If the action does not pass **BOTH** parts of the test, an EA or an EIS must be prepared.

Test Part 1: *Determine the significance of the effects of the action.*

[NAO 216-6 Section 5.05c](#) states that the following types of actions **do not** qualify for a CE (even if they would have passed Test Part 2 below):

1. Actions that involve a geographic area with unique characteristics such as historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
2. Actions that are the subject of controversy based on potential environmental consequences.
3. Actions that have uncertain environmental impacts or unique or unknown risks.
4. Actions that establish a precedent or decision in principle about future proposals.
5. Actions that may result in cumulatively significant impacts.

6. Actions that may have any adverse effects upon endangered or threatened species or their habitats. *Note that the issuance of Low Effect Incidental Take Permits under Section 10 of the Endangered Species Act do pass Test Part 1 and a CE is usually appropriate ([NAO 216-6 Section 6.03e3d](#)).*

If the action falls within any of the above categories, the action does not qualify for a CE and must be analyzed using an EA or an EIS. If the action does not fall within any of the above categories, it passes Test Part 1 and needs to be evaluated using Test Part 2.

Test Part 2: *Determine if there is a category in [NAO 216-6](#) that qualifies.*

If the action passes the first test, the next step is to determine if there is a category in NAO 216-6 that fits the action. There are six groups of NOAA actions addressed separately in NAO 216-6 that may qualify for a CE. Below are the six groups of NOAA actions with an abbreviated description of the activities within these groups that may qualify for a CE. *Note refer to the referenced section of NAO 216-6 for the full description of the CE.*

1. [Section 6.03a.3](#). *Management Plans and Management Plan Amendments:*
 - No management plan may receive a CE unless they meet the criteria in NAO 216-6 Section 5.05b.
 - Management plan amendments may receive a CE.
2. [Section 6.03b.2](#). *Trustee Restoration Actions under CERCLA, OPA, and the NMSA:*
 - CERCLA, OPA, and NMSA are not entitled to a CE.
 - Restoration actions may receive a CE provided such actions meet all of the following criteria:
 - 1) Are intended to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition.
 - 2) Use for transplant only organisms currently or formerly present at the site or in its immediate vicinity.
 - 3) Do not require substantial dredging, excavation, or placement of fill.
 - 4) Do not involve a significant added risk of human or environmental exposure to toxic or hazardous substances.
3. [Section 6.03c.3](#). *Projects and Other NOAA Actions:*
 - Research Programs.
 - Financial and Planning Grants. *Note that new financial support services and programs should undergo an EA or EIS at the time of conception to determine if a CE could apply to subsequent actions.*
 - Minor Project Activities.
 - Administrative or Routine Program Functions.

- Real Estate Actions.
- Construction Activities. *Minor construction conducted in accordance with approved facility master plans and construction projects on the interiors of non-historic NOAA-owned and leased buildings.*
- Facility Improvement or Addition.
- NEXRAD Radar Coverage.
- Other Categories of Actions Not Having Significant Environmental Impacts. *These actions include: routine operations and routine maintenance, preparation of regulations, Orders, manuals, or other guidance that implement, but do not substantially change these documents, or other guidance; policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature, or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case; activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public; actions with short term effects, or actions of limited size or magnitude.*

4. [Section 6.03d.4](#). *Actions Taken Under the Magnuson-Stevens Act:*

- Ongoing or recurring fisheries actions of a routine administrative nature when the action will not have any impacts not already assessed.
- Minor technical additions, corrections, or changes to an FMP.

5. [Section 6.03e.3](#). *Actions Taken Under the Endangered Species Act:*

- Preparation of Recovery Plans.
- Scientific Research and Enhancement Permits.
- Critical Habitat Designations. *Note that in the case of critical habitat designations that include habitat outside the current occupied range of a listed species, the potential for economic and/or other impacts over and above those resulting from the listing exists; therefore, in general, a categorical exclusion will not apply.*
- “Low Effect” Incidental Take Permits.

6. [Section 6.03f.2](#). *Actions Taken Under the MMPA:*

- Scientific research, enhancement, photography, and public display permits issued under Section 101(a)(1) and 104 of the MMPA, and letters of confirmation for activities conducted under the General Authorization for Scientific Research established under Section 104 of the MMPA.

- Small take incidental harassment authorizations under Section 101(a)(5)(a), tiered from a programmatic environmental review.

Note that in cases such as those authorized by Section 109(h) of the MMPA such actions are not exempt from NEPA, nor are they categorically excluded, and alternative measures are necessary. Under these conditions, a programmatic review may be the appropriate means for meeting NEPA requirements.

The CEs for each group are described in the CE checklist found in Attachment A of this handbook.

If the proposed action falls within one of the categories in Test Part 2, a CE may be applied to that action. If it is determined that the action does qualify for a CE, a memorandum to the administrative record is prepared, refer to Section 0 of this handbook for additional instructions on how to document this eligibility in the administrative record.

3.3 Are the Impacts of the Proposed Action Potentially Significant?

If the action does not automatically require an EIS and does not qualify for a CE, an EA will need to be prepared to document the potential significance of the impacts and determine if an EIS will be required. If there is the potential for significant impacts the EIS documentation process may begin, bypassing the EA process.

3.3.1 How to Determine if Environmental Impacts will be Significant

The goal of an EA is to determine if the impacts of the proposed action are likely to be significant. [NAO 216-6](#) lists factors to consider in making this determination. The first list of criteria below is for all NOAA actions and the second list of criteria is specific to fishery management actions.

The following list from [NAO 216-6 Section 6.01](#) describes factors that should be considered when determining significance for **all NOAA actions**:

1. Impacts may be both beneficial and adverse; a significant impact may exist even if the Federal agency believes that on balance the impact will be beneficial.
2. Degree to which public health or safety is affected.
3. Unique characteristics of the geographic area.
4. Degree to which impacts on the human environment are likely to be highly controversial.
5. Degree to which impacts are highly uncertain or involve unique or unknown risks.
6. Degree to which the action establishes a precedent for future actions with significant impacts or represents a decision in principle about a future consideration.
7. Individually insignificant but cumulatively significant impacts.
8. Degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources.

9. Degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected.
10. Whether a violation of Federal, state, or local law for environmental protection is threatened.
11. Whether a Federal action may result in the introduction or spread of a non-indigenous species.

The following criteria from [NAO 216-6 Section 6.02](#) clarify how significance is determined when assessing **fishery management actions**. The action could be considered significant if one or more of the following criteria apply:

1. The proposed action may be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action.
2. The proposed action may be reasonably expected to jeopardize the sustainability of any non-target species.
3. The proposed action may be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the MSA and identified in FMPs.
4. The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.
5. The proposed action may be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.
6. The proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species.
7. The proposed action may be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.).
8. The proposed action may have significant impacts on the quality of the human environment are likely to be highly controversial.

If after considering all relevant criteria listed above, it is determined that the impacts of the proposed action do not have the potential to be significant or there is uncertainty as to the potential significance of the impacts of the proposed action, an EA should be prepared. Then, if it is confirmed that the impacts of the proposed action are not likely to be significant, a FONSI should be prepared. If it is determined from analysis in the EA that significant impacts may occur the EIS process should be initiated.

The processes for preparing EAs and EISs are described in Section 5.0 of this handbook.

4.0 CATEGORICAL EXCLUSIONS

This section outlines the general process NOAA staff should follow when preparing CEs. Once it has been determined that an action qualifies for a CE, a decision memorandum must be drafted and filed.

A CE applies if the proposed action falls within a list of actions that do not individually or cumulatively have a significant impact on the human environment. Section 3.2, Test Part 2 of this handbook lists these categories. CE categories are those that have been found to have no significant effect on the environment, and are documented in procedures adopted by a Federal agency ([40 CFR 1507.3](#)). If an action qualifies for a CE, neither an EA nor an EIS is required.

If a proposed action qualifies for a CE, then the only NEPA requirement is to document this in the administrative record. This is done by preparing a CE decision memorandum to the record.

4.1 Contents of a CE Memorandum

The following should be included in a CE memorandum:

1. Brief description of the proposed action.
2. Brief description of the expected direct, indirect, and cumulative impacts of the proposed action noting how they address the criteria in [NAO 216-6 Section 5.05b and c](#).
3. Identification of what categorical exclusion in NAO 216-6 meets the proposed action.
4. Explanation of how the proposed action is consistent with the identified categorical exclusion.

CE memoranda should be prepared by the NOAA staff with the most technical knowledge about the proposed action and signed by the RPM as a memo to the record. A CE memorandum template can be found at www.nepa.noaa.gov. Attachment B of this handbook shows a CE memorandum template.

4.2 Clearance Process for CE Memoranda

The clearance process are the steps that a document must be sent through in order to become official. It involves review and approval by certain parties. Many NEPA documents must be cleared through several offices before becoming official.

Each region or office has clearance procedures for CE memoranda, refer to the region or office for specific clearance requirements. There is no clearance requirement for CE memoranda by the NOAA NEPA Coordinator. However, copies of all CE memoranda must be transmitted to the NOAA NEPA Coordinator no later than three months after the memorandum is cleared and approved ([NAO 216-6 Section 5.05d](#)). Many programs collect CE memoranda in a central place and transmit them as a package to the NOAA NEPA Coordinator at the end of each quarter.

5.0 ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS

This section outlines the general process NOAA staff should follow when preparing EAs and EISs. Where the two processes differ, those differences are noted. CEQ regulations provide guidance on the requirements for EISs, but less specific guidelines for EAs. In some circumstances, [NAO 216-6](#) and this handbook make interpretations of CEQ regulations to provide more clarity to NOAA staff preparing EAs. These interpretations are based on NEPA case law, CEQ's guidance document *NEPA's Forty Most Asked Questions*, other guidance documents provided by CEQ, standard NOAA practice, and declared NOAA policy.

This chapter describes the major steps of the EA and EIS processes including:

- Scoping
- Contents
- Style
- Format and organization
- Decision documents
- Review and clearance procedures
- EPA reviews of EISs
- Distribution and circulation

5.1 General Overview of EA and EIS Processes

NOAA's EA process is depicted in Figure 5. The length of time between these steps is discussed in Section 2.4 of this handbook. Refer to Section 5.8 of this handbook for more information regarding review and clearance procedures for EAs.

NOAA's EIS process is depicted in Figure 6. The length of time between these steps is discussed in Section 2.4 of this handbook. Refer to 5.8 of this handbook for more information regarding review and clearance procedures for EISs.

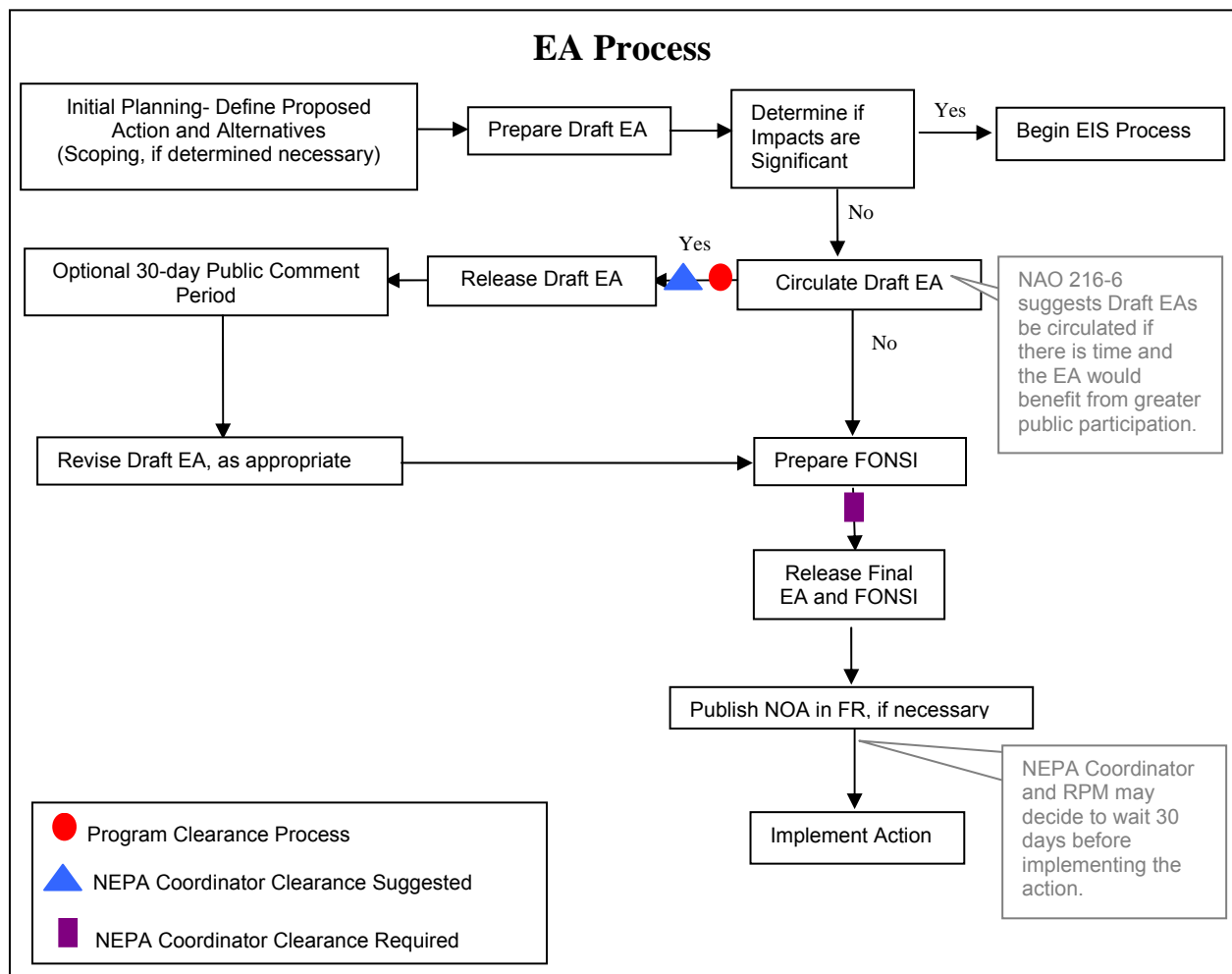


Figure 5. EA Process.

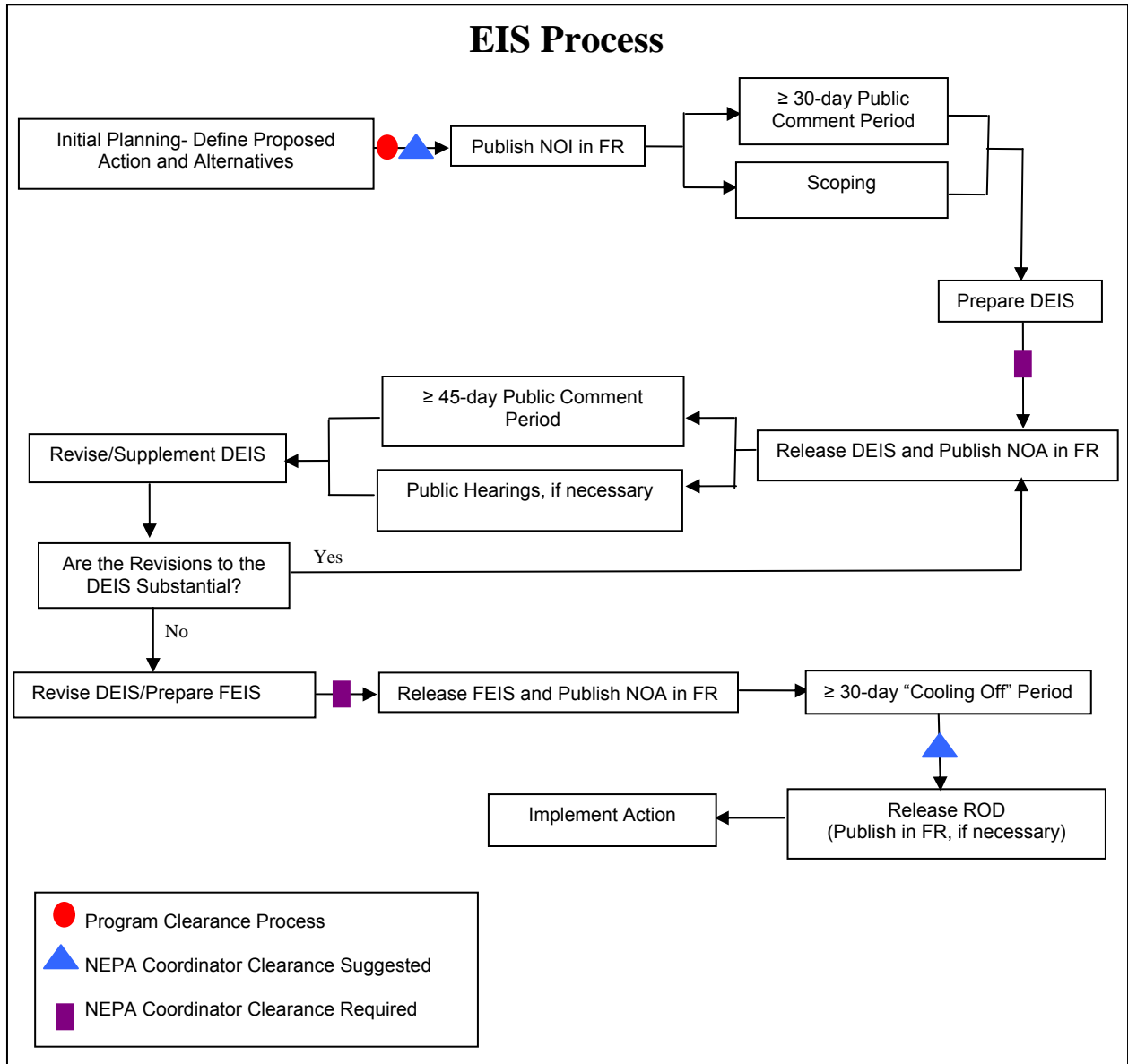


Figure 6. EIS Process.

5.2 Scoping

The first step in analyzing a proposed action under NEPA is scoping.

What is Scoping?

[NAO 216-6 Section 4.01w](#) and [CEQ regulations 40 CFR 1501.7](#) define scoping as:

“An early and open process for determining the scope of issues to be addressed and identifying the significant issues related to a proposed action.”

The purpose of the scoping process is to determine the scope or range of impacts of the proposed action on the human environment.

How is Scoping Conducted?

Scoping may be completed using a variety of formats (refer to Figure 7) including:

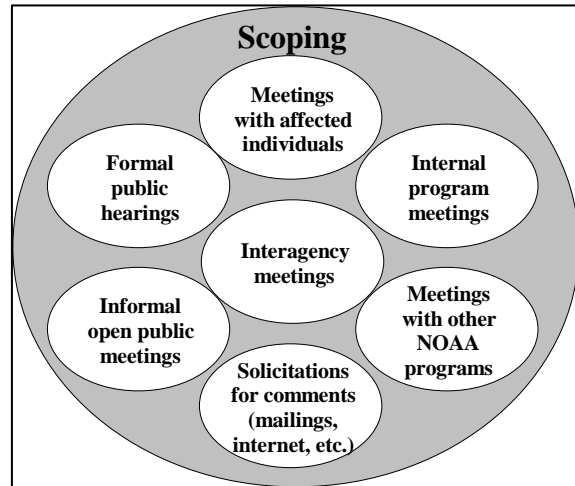


Figure 7. Forms of Scoping.

1. Internal meetings within the particular NOAA program that is taking the action.
2. Meetings within NOAA between different programs with varying expertise (NOAA's Office of Oceanic and Atmospheric Research (OAR) meeting with NOAA Fisheries' Protected Resources to determine the impacts of research on marine mammals or endangered species).
3. Interagency meetings between the NOAA program taking the action and other Federal agencies with jurisdiction and/or expertise (NOAA Fisheries and National Ocean Service (NOS) meeting with the Department of Defense to determine interactions between new Coast Guard vessel guidelines and NOS coastal zone responsibilities, and NOAA Fisheries' habitat and protected resources responsibilities).
4. Formal public hearings where members of the public are invited to attend and provide testimony that will be recorded and entered into the record.
5. Informal public meetings with the public at large or invited individuals to discuss the project.
6. Solicitation of public comments through less direct contact (mass mailings, newspaper ads, internet sites, telephone conversations).

The appropriate form of scoping will vary depending on the action and in many cases may be a combination of several formats. Refer to the CEQ, April 30, 1981, [Memorandum for General Counsels, NEPA liaisons and Participants in Scoping](#) at <http://ceq.eh.doe.gov/nepa/regs/scope/scoping.htm> for more information regarding scoping.

When Does Scoping Begin?

Formal scoping officially begins when the NOI is published in the *Federal Register* (refer to Section 5.2.1 of this handbook for details regarding the NOI), but may in practice begin in the early stages of project development. Scoping ensures response to changes in the project and to new or unexpected information that is revealed during the NEPA process. It also ensures that the public is notified about the process and has ample opportunity to participate and comment on the proposed action and alternatives.

What Does Scoping Accomplish?

Scoping is important to the NEPA process and the overall decision-making process. The objectives of scoping are to:

1. Determine the range (scope) of issues associated with an action.
2. Determine the relevant players and potential cooperating agencies; including other Federal agencies, state and local government agencies, tribal governments, private and public interest groups, and general constituencies.
3. Develop a strategy to ensure the NEPA analysis is done efficiently (determine approximate length of the document; a timeframe for its completion; and eliminate from detailed study issues which are not significant).
4. Identify significant environmental issues and issues that are not significant dismiss from further review.
5. Ensure there is consensus (where appropriate) as to the project's purpose and need.
6. Consider the possible alternatives for meeting the project's goals.
7. Identify information gaps and other direct, indirect and cumulative actions potentially affecting the proposed action.
8. Divide drafting responsibilities among cooperating agencies (if applicable).

Are Public Meetings Required as Part of Scoping?

A public meeting is not a requirement in CEQ regulations or NAO 216-6. Both however, recommend at least informal scoping meetings. *Note that it is standard practice for NMFS to hold public scoping meetings coordinated with RFMCs for MSA actions.* Actively involving the public is important in seeking information to determine the issues surrounding a proposed action. Involving the public may take many forms and does not have to occur in a formal setting such as a public hearing. It can take place over the phone, over the Internet, through mailings, and via other less formal means. It can mean involving the entire public at large or a selected subset that has been identified as potentially affected by, or particularly interested in the action. The degree of public involvement will vary depending on the nature of the action.

Does Scoping Apply in the Preparation of an EA?

There is no legal requirement to conduct formal scoping for an EA. However, NAO 216-6 and CEQ regulations encourage scoping for actions covered by an EA. Regardless of the type of document being prepared for an action, the objectives listed above help to ensure that all relevant environmental issues are covered.

5.2.1 Notice of Intent (NOI)

The NOI is required by [CEQ regulations 40 CFR 1508.22](#) and notifies the public that an EIS will be prepared and considered. An NOI is **not required for an EA**. The NOI should be prepared as soon as practicable after the need for an EIS had been determined. [Section 5.02c4 of NAO 216-6](#) provides explicit direction for what an NOI is to include and other related requirements. The NOI should briefly:

- Describe the proposed action and possible alternatives.
- Provide dates, times and locations of any planned scoping meetings or hearings.
- Provide the RPM's name and contact information.

If an RPM decides not to pursue a proposed action after an NOI has been published, a second NOI must be published to inform the public of the change ([NAO 216-6 5.02d4](#)).

5.3 Contents of EAs and EISs

This section describes the required contents of EISs and EAs. EISs and EAs have different content requirements. Figure 8 shows the required contents for each. The following descriptions indicate if the item is required for an EIS, an EA, or both.

Contents of EAs and EISs	
EA	EIS
Table of Contents	Cover Sheet
Purpose and Need	Summary
Description of Proposed Action and Alternatives	Table of Contents
Affected Environment	Purpose and Need
Environmental Consequences	Description of Proposed Action and Alternatives
Mitigation Measures (if applicable)	Affected Environment
List of Preparers	Environmental Consequences
Distribution List (if applicable)	Mitigation Measures (if applicable)
Appendices (if applicable)	List of Preparers
	Distribution List
	Index
	Appendices (if applicable)

Figure 8. Contents of EAs and EISs.

5.3.1 Cover Sheet

EIS: Every EIS must have a one-page cover sheet that includes the following information ([40 CFR 1502.11](#)):

1. A list of the responsible agencies including the lead agency and any cooperating agencies.

2. The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
3. The name, address, and telephone number of the person at the agency who can supply further information.
4. A designation of the statement as a draft, final, or draft or final supplement.
5. A one paragraph abstract of the statement.
6. The date by which comments must be received (computed in cooperation with EPA under [40 CFR 1506.10](#)).

EA: A cover sheet is not a requirement for an EA, but should be included when possible.

5.3.2 Summary

EIS: Every EIS must contain a summary that adequately and accurately summarizes the substantive parts of the EIS. The summary may also be called the executive summary. The summary shall include the following information as applicable ([40 CFR 1502.12](#)):

1. A brief summary of the major conclusions.
2. A description of any areas of controversy (including issues raised by agencies and the public).
3. The issues to be resolved (including the choice among alternatives).

According to CEQ regulations this summary will normally not exceed 15 pages ([40 CFR 1502.12](#)).

EA: A summary is not generally required for an EA, but may be appropriate if the action or issues are complex or the document is particularly lengthy.

5.3.3 Purpose and Need

EIS and EA: Every EIS and EA must contain a purpose and need statement. [CEQ regulations 40 CFR 1502.13](#) state, “The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”

The purpose and need section presents a brief statement explaining why the action is being considered. The purpose and need specifies the underlying purpose and need to which NOAA is responding and sets the overall direction of the environmental analysis process. The Purpose and Need Chapter should answer the question, “Why is NOAA proposing this action?”

The purpose and need serves as an important screening criterion for determining which alternatives are reasonable. All reasonable alternatives examined in detail must meet the defined purpose and need.

Following are guidelines for writing purpose and need statements:

- Ensure the statement of purpose and need is not written too narrowly in an attempt to limit the number of alternatives that need to be considered.
- Write statements of purpose and need in a manner that describes the goal or end result of the action not the manner in which to accomplish the end result.
- Write the purpose and need statement in a short and concise manner that describes the driving force behind NOAA's action.

5.3.4 Description of Proposed Action and Alternatives

EIS and EA: Every EIS and EA must contain a detailed description of the proposed action. An EIS must address all reasonable alternatives, while an EA analysis of alternatives may be more limited, as discussed below. According to [CEQ regulations 40 CFR 1502.14](#), "This section [chapter] is the heart of the environmental impact statement." This chapter answers the question, "How will NOAA accomplish the goals and objectives set forth in the statement of purpose and need?" This chapter describes the proposed action and alternatives that will fulfill the requirements of the purpose and need statement. The proposed action should be identified to make the readers aware of the action that is being considered. There may be several alternatives to accomplish the purpose and need, but NOAA will usually select a preferred approach based on environmental, economic, technical, and other considerations.

This chapter of the EIS or EA describes each alternative and identifies the preferred alternative. This chapter should focus on providing objective descriptions of all reasonable alternatives. This chapter may also include short, concise summaries of the impacts, provided in comparative form, but detailed analyses of the impacts of each alternative should be discussed in the "Environmental Consequences" Chapter of the NEPA document (refer to Section 5.3.6 of this handbook for information regarding environmental consequences).

Reasonable alternatives are those that may be feasibly carried out based on technical, economic, environmental and other factors, and meet the purpose and need for the proposed action. Pursuant to [CEQ regulations 40 CFR 1505.1\(e\)](#), the alternatives described in this chapter must include all alternatives under consideration by NOAA. This also includes the No Action Alternative (refer to Section 5.3.4.2 of this handbook for information regarding the No Action Alternative).

According to [CEQ regulations 40 CFR 1502.14](#) the Proposed Action and Alternatives Chapter should:

1. Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
2. Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
3. Include reasonable alternatives not within the jurisdiction of the lead agency.

4. Include the No Action Alternative. The No Action Alternative is the most likely future that could be expected to occur in the absence of the project. Where the future is different from existing conditions, the differences should be clearly defined.
5. Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
6. Include appropriate mitigation measures not already included in the proposed action or alternatives.

Refer to the NOAA, December 16, 2002, [Memorandum for Legal Guidance on Determining Related Actions and Developing Reasonable Alternatives for Inclusion in a Single EIS](http://www.nepa.noaa.gov/reasonable_alts.pdf) at http://www.nepa.noaa.gov/reasonable_alts.pdf for more information on development of alternatives.

Number of Alternatives to Include

The number of alternatives considered reasonable will vary depending on the nature of the purpose and need for the action. The alternatives described in this chapter should be representative of all of those possible actions that can be reasonably expected to satisfy the purpose and need.

It is conceivable, that in some situations, NOAA will only include a description of two alternatives: the proposed action and the No Action Alternative. For example, when the NOAA action is to issue a permit to an individual, NOAA may only have two possible actions: issue the permit or not issue the permit.

In other scenarios, such as fishery management, there may be an infinite number of alternatives to satisfy the purpose and need. This is particularly true when the purpose and need is fairly broad. For example, NOAA may consider an entirely open fishery with no controls, close the fishery entirely, or any combination of partial closures.

[*NEPA's Forty Most Asked Questions, Question 1b*](#) states that for some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. When there are potentially a very large number of alternatives, only a reasonable number, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

5.3.4.1 Alternatives Considered but Rejected

EIS and EA: For EISs and EAs, NOAA often considers a number of alternatives for a particular need, at least informally. Some of these alternatives could be considered reasonable while others are unlikely to accomplish NOAA's goals. Alternatives rejected for further analysis include only those that are not required to evaluate alternatives beyond the reasonable range. If alternatives are eliminated from further analysis, the EIS or EA should briefly discuss the reasons for their elimination ([40 CFR 1502.14\(a\)](#)). This discussion can be accomplished in a subsection of the

Alternatives Chapter called “Alternatives Considered, but Rejected” or “Alternatives Considered, but not Analyzed in Detail.”

During scoping, interested parties may also suggest certain alternatives that are not reasonable. While not reasonable, it may be that these alternatives seem logical to at least some parties. When publishing a draft EIS or EA for public comment, NOAA may find it useful to identify these alternatives and explain why they are not reasonable and how they did not meet the purpose and need for the proposed action. This will allow interested parties providing comments on the draft EIS or EA to focus their attention on alternatives that will meet the purpose and need.

5.3.4.2 The No Action Alternative

EIS and EA: Every EIS and EA must include an analysis of the No Action Alternative ([40 CFR 1508.14 \(d\)](#)). The No Action Alternative is just that: NOAA not taking any action to meet the purpose and need for the proposal. In most cases, the No Action Alternative would not further NOAA’s stated purpose and need. However, it still must be described in the EIS or EA in order to provide a baseline for comparison with the proposed action and any alternatives.

The No Action Alternative should be accurately described. In general, the No Action Alternative represents what would happen if a proposed action did not take place. When NOAA is considering the issuance of a permit or grant, the No Action Alternative is the denial of the permit application or funding denial for a grant proposal. The No Action Alternative discussion should provide a brief summary of what would occur if the action is not permitted. In some cases the No Action Alternative may result in other predictable actions. For example, if NOAA takes no action on a permit request to install a submarine cable through a national marine sanctuary, the proponent may inform NOAA that it would install the cable outside the sanctuary. This description should not, however, be overly speculative about what may occur if NOAA were to take no action.

There are two interpretations of the No Action Alternative. The first interpretation may involve updating a management plan where ongoing programs initiated under existing legislations and regulations will continue, even as new plans are developed. In these cases the “no action” is “no change” from current management directions. To develop an alternative based on no management would be ineffective. Therefore, the No Action Alternative may be thought of in terms of continuing the current direction of action until that action is changed. Impacts of alternative management schemes should be compared to those impacts projected for the existing plan. Alternatives would include management plans of greater and lesser intensity ([NEPA’s Forty Most Asked Questions, Question 3](#)).

The second interpretation of “no action” is in instances involving Federal decisions of proposals for projects. “No action” in these cases means the proposed action would not take place. The resulting environmental impacts from taking no action should be compared to the impacts of permitting the proposed action or an alternative action ([NEPA’s Forty Most Asked Questions, Question 3](#)).

5.3.4.3 Identification of the Preferred Alternative

EIS and EA: Every EIS and EA should identify the preferred alternative. [CEQ regulations 40 CFR 1502.14\(e\)](#) require agencies to identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference. In certain circumstances it may be appropriate or necessary to identify multiple preferred alternatives in the draft document, and select one preferred alternative in the final document. However, this practice is rarely done and not recommended.

The preferred alternative is the alternative that NOAA concludes will satisfy the purpose and need for action and will fulfill NOAA's statutory missions and responsibilities. Considering a wide range of factors including environmental, social, and economic impacts; technical feasibility; and others, this is the alternative NOAA considers to be optimum. The preferred alternative does not have to be the alternative with the least environmental impacts. Often, the agency's proposed action is the preferred alternative.

The purpose of identifying the preferred alternative is to provide interested parties commenting on NOAA's environmental document information on which alternative NOAA believes would best accomplish its strategic planning objectives.

5.3.4.4 Identification of the Environmentally Preferable Alternative

EIS: The environmentally preferable alternative must be identified in the Record of Decision (ROD) that is based on the final EIS ([40 CFR 1505.2 \(b\)](#)).

[NEPA's Forty Most Asked Questions, Question 6](#) defines the environmentally preferable alternative as:

The alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

EA: Identification of the environmentally preferred alternative is not required for an EA.

5.3.5 Affected Environment

EIS and EA: All EISs and EAs must include a description of the environment in which the proposed action and alternatives are to take place. Focus should be on specific resources that are most likely to be impacted. For project-specific analysis, the affected environment typically encompasses the proposed action's site and immediate vicinity. However, the analysis of cumulative impacts may broaden that range.

[CEQ regulations 40 CFR 1502.15](#) describe this requirement as follows:

The environmental impact statement shall **succinctly** describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

This chapter is typically divided into subsections that address major categories of resources. For example, many EISs and EAs use subsections of biological resources, socioeconomic resources, habitat, cultural resources, and historical resources. Each resource described in the Affected Environment Chapter must also receive a parallel discussion in the Environmental Consequences Chapter.

Incorporating by reference other EISs and EAs may be used to add information about the affected environment without adding length to the document. Refer to Section 5.4 of this handbook for more information regarding incorporation by reference.

5.3.6 Environmental Consequences

EIS and EA: All EISs and EAs must have a description of the anticipated environmental consequences of the proposed action and alternatives on the resources described in the Affected Environment Chapter. However, the focus of this description in EISs and EAs is slightly different. This chapter forms the scientific and analytic basis for the comparison of the proposed action and alternatives.

For an **EIS** the Environmental Consequences Chapter focuses on a detailed analysis and description of the environmental impacts or effects of the proposed action and alternatives

[CEQ regulations 40 CFR 1508.8](#) states that effects include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of

affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Note that the term “effects” includes impacts that may be beneficial or detrimental to the resources.

For an **EA** the Environmental Consequences Chapter focuses on determining if significant impacts are likely to occur or not. If there is potential for significant impacts than an EIS will need to be prepared.

While similar in content, this chapter is generally more extensive and more detailed in an EIS as compared to an EA. The analysis in an EIS goes beyond that required to determine the potential for significant impacts and provides a more thorough analysis and description of the extent of those effects.

[CEQ regulations 40 CFR 1502.16](#) state the Environmental Consequences Chapter should discuss the following:

- 1) Direct effects and their significance.
- 2) Indirect effects and their significance.
- 3) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.
- 4) The environmental effects of alternatives including the proposed action; comparisons will be based on this discussion.
- 5) Energy requirements and conservation potential of various alternatives and mitigation measures.
- 6) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
- 7) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
- 8) Means to mitigate adverse environmental impacts.

Note that the above language is specifically directed at EISs, but may be used as a guideline for EAs.

The impacts, or effects, analyzed in this chapter of **EISs and EAs** must include a discussion of impacts that are expected to result from:

1. The conduct of the proposed action itself or any of the alternatives (direct impacts).

2. Activities that are not a part of the proposed action or any of the alternatives but are reasonably foreseeable consequences of NOAA conducting the proposed action or alternatives (indirect impacts).

This chapter must discuss these impacts in each of the following contexts:

1. Viewing the direct and indirect impacts of the proposed action and alternatives as if it were the only activity being conducted (individual impacts).
2. Viewing the direct and indirect impacts in the context of all other activities (human and natural) that are occurring in the affected environment and impacting the resources being affected by the proposed action and alternatives (cumulative impacts).

[CEQ regulations 40 CFR 1508.7](#) define cumulative impacts as:

The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The process of identifying and analyzing cumulative impacts can be complicated in many situations. For more information on cumulative impacts analysis refer to CEQ's report, *Considering Cumulative Effects Under the National Environmental Policy Act* at <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>.

5.3.7 Comparing Alternatives

EIS and EA: Every EIS and EA must compare the alternatives. One of the most important components of any NEPA analysis is the illustration of how the impacts of the alternatives compare to the each other. The Environmental Consequences Chapter should compare the impacts of the alternatives and provide a simple mechanism for the reader to compare the alternatives. An Alternatives Comparison Table is a simple way to show the impacts of all of the alternatives. This chapter of an EIS or EA can not just have a table, written descriptions of the impacts must be provided. Figure 9 shows a simplified example alternatives comparison table. The table shows the impacts to resources by alternative. The table used in an EIS or EA may have more detail and should address all of the resources described and analyzed in the EIS or EA.

Example Alternatives Comparison Table			
Resource	Alternative I No Action	Alternative II Preferred Alternative	Alternative III
Soils	Continue with existing practices for erosion control. Impacts could occur from shoulder blading and winter sanding.	Same as No Action, except practices would focus on prevention of soil movement into salmonid habitat. Practices should minimize soil structure impacts.	Same as Preferred Alternative.
Aquatic Habitat	Minor impacts, but none would have substantial impacts at the watershed scale.	No adverse impacts, some incremental beneficial impacts.	Same as Preferred Alternative.
Wildlife	No adverse impacts.	Beneficial impacts for riparian-dependent wildlife.	No adverse impacts.
Vegetation	Minor impacts, but none at the watershed scale.	Beneficial impact of more native vegetation in riparian areas.	Minor impacts, but none at the watershed scale.

Figure 9. Example Alternatives Comparison Table

5.3.8 Mitigation Measures

EIS and EA: For EISs and EAs if any of the alternatives, including the preferred alternative, include mitigation measures those measures should be included with the analysis of each alternative in the Environmental Consequences Chapter. Mitigation measures are measures that avoid, reduce, or minimize the effects of the proposed action and alternatives.

According to [CEQ regulations 40 CFR 1508.20](#) mitigation measures may include the following types of actions:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

In addition to the description of the mitigation measures, a table may be used to show the mitigation measures for each alternative.

Mitigation measures must also be addressed in the ROD (refer to Section 5.7.3 of this handbook for more information regarding the ROD). The ROD should state whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized in the ROD, where applicable, for any mitigation ([40 CFR 1505.2 \(c\)](#)).

5.3.9 Lists of Preparers and Agencies Consulted

EIS and EA: Both EISs and EAs must include a list of the persons involved or consulted in the preparation of the document ([40 CFR 1502.17](#)). This chapter should include any person that was primarily responsible for preparing the document (or portion thereof), preparing any relevant background papers, and providing substantive information. This includes full time NOAA staff, NOAA contractors, consultants paid by NOAA, and persons from other agencies who furnished information. The name, affiliation, and qualifications (expertise, experience, professional discipline) for each involved person should be included.

5.3.10 Distribution List

EIS: All EISs must contain a distribution list that includes other agencies, organizations, and individuals who requested the final EIS. An asterisk or some other notation should be included for those organizations or individuals who commented on the draft EIS. Another notation may be used to denote those who made statements or commented at public hearings.

EA: Since draft EAs are not necessarily distributed and commented on by the public or other parties, a distribution list is not necessary unless the draft was sent out and comments were received.

5.3.11 Index

EIS: All EISs must contain an index. The index should include an alphabetical list of key words and their associated page numbers that will allow the reader to find information easily within the EIS. The key word list should focus on the subject matter and not simply repeat a list of the headings within the Table of Contents.

EA: An index is not required for an EA.

5.3.12 Appendices

EIS and EA: Both EISs and EAs may use appendices, as appropriate. Material attached as an appendix should be referred to or summarized in plain language in the body of the EIS or EA for the average non-technical reader. Appendices should include information specific to the EIS or EA. Avoid making the appendices a repository for unnecessary information. Appendices should be circulated with the EIS or EA or readily available upon request.

In an effort to keep EISs and EAs analytical rather than encyclopedic, CEQ regulations and guidance suggest consolidating certain discussions into appendices. Refer to questions [CEQ regulations 40 CFR 1502.18](#) and [NEPA's Forty Most Asked Questions, Question 25](#) for more information.

Materials that are prepared specifically for an EIS or EA that are best consolidated into an appendix include the following:

1. Lengthy technical discussions of modeling methodology, baseline studies, or other work used in the body of the EIS or EA.
2. Any material that is likely to be understood only by technically trained individuals.
3. Specific responses to comments received on a DEIS.

5.4 Incorporation by Reference

EIS and EA: Both EISs and EAs may incorporate materials by reference. [CEQ regulations 40 CFR 1502.21](#) and [NAO 216-6 Section 5.09 \(d\)](#) encourage the use of incorporation by reference as a method of shortening documents and reducing unnecessary duplication of information. Information that should be incorporated by reference includes:

1. Material that is not directly related to the proposed action.
2. Other EISs or EAs prepared by NOAA or other agencies.
3. Detailed descriptions of the Affected Environment.
4. Research papers in the general scientific literature.
5. Technical background papers that reviewers with technical training may find useful in evaluating the EIS or EA.

Material incorporated by reference does not need to be circulated with an EIS or EA. However, the reader must be informed as to where it may be obtained, either through general literature or direct mailing from NOAA. The referenced material should be summarized in plain language in the body of the EIS or EA.

5.5 Style

While, there is no required format for EISs or EAs, there are requirements that the analysis be written in plain language ([40 CFR 1502.8](#)), that it be concise and that it be analytic not encyclopedic ([40 CFR 1502.2](#)). It should also be based on scientific accuracy and reflect unknown information ([40 CFR 1502.24](#)). In addition, a document's organization plays a significant role in the overall quality of the document and its effectiveness in conveying the primary message. The following guidelines on style will assist NOAA staff to prepare quality NEPA documents:

- Write EISs and EAs precisely and concisely, using plain language. Refer to: <http://www.plainlanguage.gov/> for information on plain language.
- Define all abbreviations and acronyms the first time they are used in the document.
- Provide a list of abbreviations and acronyms with definitions at the beginning of the EA or EIS.
- Minimize the use of abbreviations and acronyms to the extent practical. In doing so, use only those acronyms that are referred to frequently in the EA or EIS or those that are common to the public.

- Define all technical terms that must be used, preferably in a single glossary or definitions chapter.
- Ensure information provided in tables and figures is consistent with information in the text and appendices.
- Use consistent units of measurement throughout the document.
- If scientific notation is used, provide an explanation.
- Ensure that regulatory terms used in the document are consistent with their codified regulatory definitions.
- Use conditional language, such as “would” rather than “will,” in describing the proposed action and alternatives and their potential consequences.
- Make full use of graphics and other visual aids whenever possible to simplify EISs and EAs and make them more readable.
- Make appropriate use of appendices.
- Ensure that appendices and documents incorporated by reference are cited.
- Include a discussion of the relationship between the subject EIS or EA and related NOAA NEPA documents.
- Avoid copying and pasting identical text from one chapter to another. If, for example, the impacts of one alternative are the same as those of another, note this fact by summarizing. Unless necessary, do not restate the impacts except to highlight any subtle differences.

5.6 Format and Organization

[CEQ regulations 40 CFR 1502.10](#) recommend using a format that presents the requirements for EISs and EAs in the following order:

- (a) Cover sheet
- (b) Summary
- (c) Table of contents
- (d) Purpose of and need for action
- (e) Alternatives including proposed action
- (f) Affected environment
- (g) Environmental consequences
- (h) List of preparers
- (i) List of Agencies, Organizations, and persons to whom copies of the statement are sent
- (j) Index
- (k) Appendices (if any)

EISs and EAs may be organized in several different ways. Some of the more common variations include:

- Addressing the Affected Environment and Environmental Consequences requirements in separate chapters (traditional format).
- Addressing the Affected Environment and Environmental Consequences requirements in a combined chapter.
- Discussing environmental effects on an alternative-by-alternative basis.

- Discussing environmental effects on an affected resource-by-affected resource basis.

All of these approaches (and combinations thereof) are acceptable, but their effectiveness and efficiency are highly dependent on the complexity of the action being taken. The EIS or EA developers should carefully consider which of these presentations is most appropriate for a particular EIS or EA. Figure 10 shows the primary components of EISs and EAs and how they relate to one another using these different organization schemes.

Example Organization Schemes					
Organization Scheme	Separate or Combined Affected Environment and Environmental Consequences Chapters	Affected Environment	Environmental Consequences (and Affected Environment for combined organization schemes)	Advantages	Disadvantages
Alternative-by-Alternative	Separate	Description of Resource A, Resource B, Resource C, etc.	Description of the effects on each resource, organized by alternative	1. Easy to discern the total environmental impacts of each alternative. 2. Can easily compare effects of an alternative on different resources.	1. Potential redundancy in describing effects of different alternatives on particular resource. 2. Difficult to compare effects on a particular resource.
Alternative-by-Alternative	Combined	Combined in next chapter	Description of the affected environment and effects on each resource, organized by alternative	1. Easy to discern the total environmental impacts of each alternative. 2. Can easily compare effects of an alternative on different resources.	1. Redundancy in describing affected environment for each alternative. 2. Difficult to compare effects on a particular resource.
Resource-by-Resource	Separate	Description of Resource A, Resource B, Resource C, etc.	Description of the effects caused by each alternative, organized by resource	1. Easy to discern how each resource is affected by the action. 2. Can easily compare effects of different alternatives on particular resources.	1. Potential redundancy where effect of different alternatives on a resource is similar. 2. No single place to see total effects of an alternative.
Resource-by-Resource	Combined	Combined in next chapter	Description of the affected environment and effects caused by each alternative, organized by resource	1. Easy to discern how each resource is affected by the action. 2. Can easily compare effects of different alternatives on particular resources.	1. Potential redundancy where effect of different alternatives on a resource is similar. 2. No single place to see total effects of an alternative.

Figure 10. Example Organization Schemes

Some guidelines to consider regarding organization of EISs and EAs include:

- Be consistent in how the effects on environmental resources are analyzed (choose one organizational scheme).
- Describe the net environmental effects, or residual impacts, in summary form at the beginning or end of the discussion.
- Summarize net effects in tabular form to allow ease of comparison across alternatives.
- Present alternatives and resources in the same order throughout the document.
- Present the No Action Alternative first to establish a baseline against which other alternatives will be compared.

5.7 Decision Documents

One of the overall goals of EAs and EISs is to provide decision-makers and the public with information about the impacts of NOAA's proposed action before a final decision is made. Once NOAA has completed the EA or EIS process and has prepared a final EA or EIS, NOAA can make a decision on the proposed action. The decision is articulated in a separate decision document. For EAs, this document is called a Finding of No Significant Impact (FONSI). For EISs, this is called a Record of Decision (ROD).

5.7.1 Finding of No Significant Impact

EAs are concise documents that determine if significant impacts are likely to happen or not. If there is potential for significant impacts than an EIS will need to be prepared. If the impacts of an action are not expected to be significant a FONSI is prepared. The FONSI may be attached to the EA but should be readable as a stand-alone document. The FONSI should clearly articulate how the impacts of the proposed action are not significant, and how that conclusion was reached with regard to each of the appropriate significance criteria from [NAO 216-6 Sections 6.01 and 6.02](#).

5.7.2 Mitigated Finding of No Significant Impact

For some **EAs** a Mitigated FONSI may be appropriate. If NOAA concludes that the predicted adverse impacts of a project can be avoided, reduced, or minimized sufficiently to allow the project to move forward with minimal effect on the environment, a mitigated FONSI statement can be prepared. NOAA may rely on mitigation measures to make a FONSI only if the measures are imposed by statute or regulation, or are submitted by NOAA or an applicant as part of the original proposed action ([NAO 216-6 Section 5.03d](#)). This means that NOAA should not rely on the *possibility* of mitigation as an excuse to avoid the EIS requirement. A mitigated FONSI statement relies on implementation of effective mitigation measures to reduce the impact of the action to less than significant. This foregoes the preparation of an EIS. Whether the proposed action is modified to incorporate mitigation measures (the preferred approach) or the mitigation measures are applied later, in response to impacts, it is critical that the mitigation measures are carried out and that the mitigation has the intended effects.

5.7.3 Record of Decision

After completing the **EIS** process, the last and one of the most important steps in the NEPA process is to prepare the ROD. The ROD is NOAA's documentation of which alternative will be implemented based on NOAA's review of the EIS. RODs are public documents and must be available to the public upon request. While it is not required that the Notice of Availability of the ROD be published in the *Federal Register*, NOAA must provide appropriate public notice of the availability of the ROD ([40 CFR 1506.6](#)). Public notice may be done through newspapers, mailings, or other media form. *Note that for issues of National concern, the Notice of Availability of the ROD must be published in the Federal Register.*

RODs may be integrated with other NOAA decision documents and memoranda, however, if this is done, those decision memoranda must also be available to the public.

According to [CEQ regulations 40 CFR 1505.2](#), the following must be included in all RODs:

1. A clear statement describing the decision (which alternative was selected).
2. A listing and summary of all alternatives considered in reaching the decision, specifying the environmentally preferable alternative or alternatives.
3. If deemed appropriate, a discussion of preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions.
4. An identification and discussion of all factors that led to the decision and how those considerations entered into the decision.
5. A statement as to whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.
6. For the identified mitigation measures, a summary of the monitoring and enforcement program that will be utilized.

5.8 Review and Clearance Procedures

For both **EAs and EISs**, early involvement by the NOAA NEPA Coordinator Staff is essential to a smooth review and clearance process. Review and clearance procedures include review of the NEPA document and associated documents and signing of memos and letters indicating concurrence with the decision.

Clearance from the NOAA NEPA Coordinator in PPI is required for EAs (for concurrence on the FONSI), DEISs, and FEISs (prior to each being transmitted to EPA for filing). The review and clearance process for NEPA documents as it relates to the NOAA NEPA Coordinator is depicted in Figure 11. Section 5.8.1 of this handbook describes the review and clearance process for EAs and EISs once PPI receives the documents.

Each region or office will likely have additional clearance steps as well. As each is different, they are not included in this handbook. Consult with the appropriate region or office for information regarding their clearance process. In addition, the region or office should consider early consultation with the Office of General Counsel, particularly for complex, controversial and high-profile actions. Early legal consultation can help avoid delays in the final clearance process.

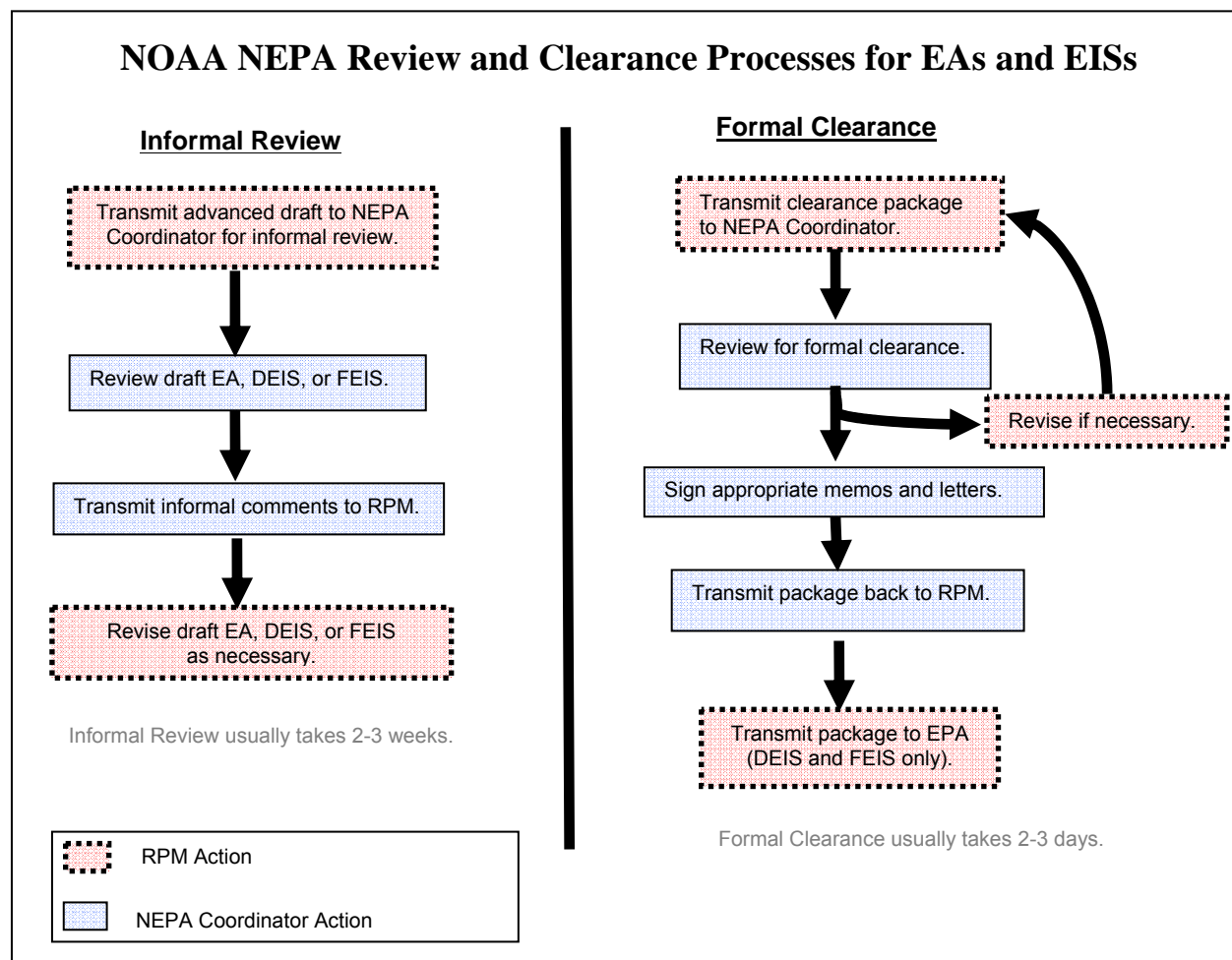


Figure 11. NOAA NEPA Review and Clearance Processes for EAs and EISs.

Figure 12 shows how the EIS clearance process can be integrated with clearance for proposed and final rules. Note that NOAA NEPA Coordinator clearance is not necessary for NOIs and RODs, however, it is included as suggestion in cases where NOAA programs require additional guidance.

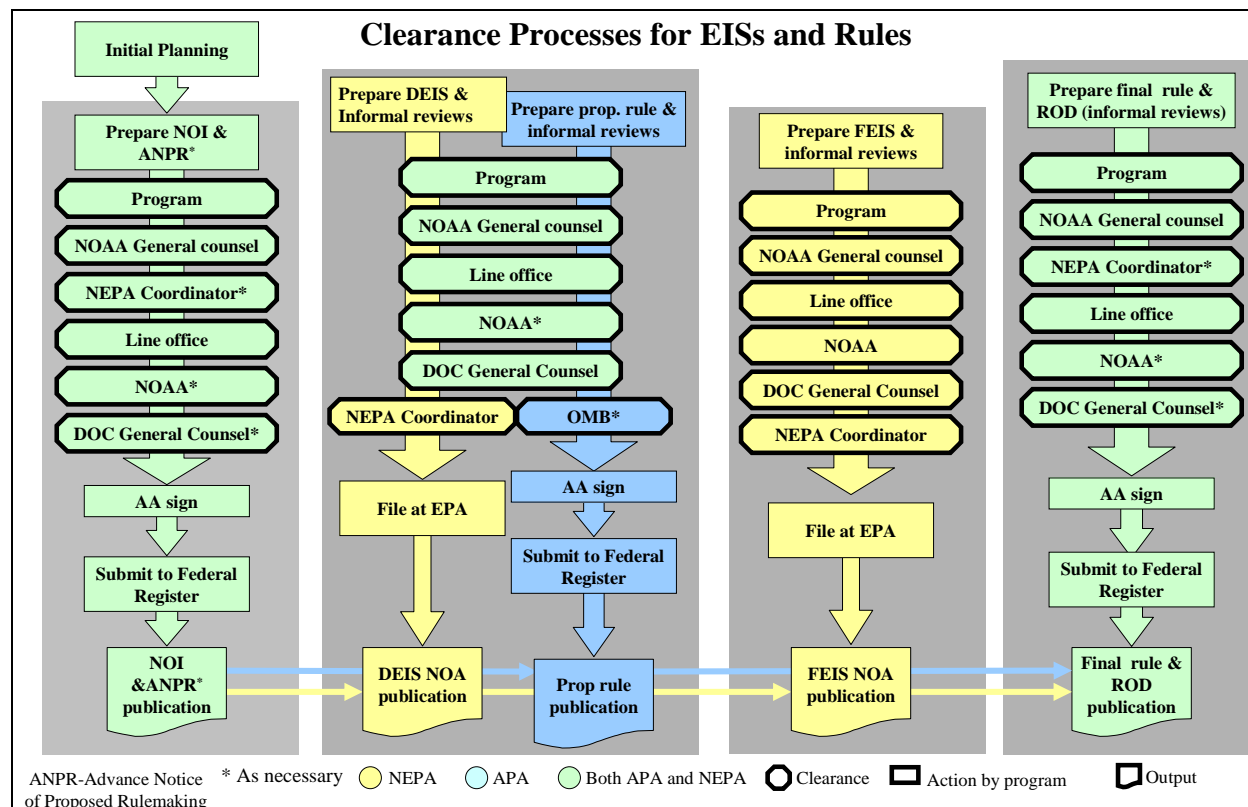


Figure 12. Clearance Processes for EISs and Rules.

5.8.1 PPI Review and Clearance

This section describes PPI's and NOAA NEPA Coordinator review and clearance process.

EAs

Once the final EA has been reviewed and cleared by the RPM/AA an EA package is submitted to PPI for review and clearance. The package should include the following:

- A copy of the EA and signed FONSI.
- A memo from the RPM/AA to the NEPA Coordinator requesting concurrence on the FONSI.
- A "To All Interested Government Agencies and Public Groups" letter from the NEPA Coordinator printed on PPI letterhead. This letter describes the action and the alternatives and designates the Responsible Program Official with contact information. This letter should also state that one copy of comments be submitted to PPI.

EISs

Once the draft or final EIS has been reviewed and cleared by the RPM/AA an EIS package is submitted to PPI for review and clearance. The package should include the following:

- A copy of the EIS. For drafts a printed copy is needed, for finals a CD copy is acceptable.
- A memo from the RPM/AA to the NEPA Coordinator explaining the action and the documents the NEPA Coordinator is signing.
- A letter from the NEPA Coordinator to the EPA printed on PPI letterhead. This letter is addressed to Ann Miller and describes the action and the alternatives and designates the Responsible Program Official with contact information.
- A “Dear Reviewer” letter from the NEPA Coordinator printed on PPI letterhead. This letter describes the action and alternatives; provides the address for comments to be submitted; and the deadline for comments to be received. This letter should also state that one copy of comments be submitted to PPI.

Once the EA or EIS package is received by PPI, it is reviewed and if complete, signed by the NOAA NEPA Coordinator. PPI retains a copy of the EIS and memos, signed memos are returned.

5.9 EPA Review of EISs

Federal agencies are required to file **EISs** with the Environmental Protection Agency (EPA) ([40 CFR 1506.9](#)). EISs must be filed no earlier than they are transmitted to commenting agencies and made available to the public. NOAA NEPA Coordinator clearance is required prior to filing EISs with EPA. *Note that there is no EPA filing requirement for EAs.*

Five bound copies of the DEISs and FEISs are required by EPA headquarters at time of filing. An additional three bound copies should be sent to each affected EPA region office ([NAO 216-6 Section 5.04c3](#)). When filing EISs at EPA, a copy of the “Dear Reviewer” letter should be placed inside each copy of the EIS. The original signed “Ann Miller” letter should be submitted to the EPA with the EISs. For more information regarding filing EISs with EPA, refer to the EPA’s website at: <http://www.epa.gov/compliance/nepa/submiteis/index.html>.

EISs may be mailed or delivered in-person to the EPA at the following addresses:

Deliveries by the U.S. Postal Service:

U.S. Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby)
Mail Code 2252-A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Deliveries in-person or by commercial mail services (Federal Express, UPS):

U.S. Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby)
Room 7220
1200 Pennsylvania Avenue NW
Washington, DC 20460

5.10 Distribution and Circulation

The requirements and guidelines for circulation and distribution of EAs and EISs are different. Each is discussed separately below.

5.10.1 EAs

[NAO 216-6 Section 5.03e.2](#) states that in cases where the RPM has adequate time and where the EA would benefit from public participation, a thirty (30) calendar day public review and comment period is encouraged prior to a FONSI determination. If such review and comment is utilized, the RPM may issue the EA in draft for public comment, and later finalize it with the action.

5.10.2 EISs

[NAO 216-6 Section 5.04c.5](#) requires that no later than the date the document is filed with EPA, copies of each DEIS and transmittal letter to interested parties must be sent to all Federal, state, and local government agencies, public groups, and individuals who may have an interest in the proposed action. Copies of each final EIS must be sent to parties who submitted comments on the DEIS, interested parties specifically requesting a copy, and others as determined by the RPM. The EIS and related documents must be made available for public inspection at locations deemed appropriate by the RPM, such as public libraries.

Refer to the NOAA NEPA guidance memo, *Guidance on Distribution of Draft and Final Environmental Impact Statements to Commenting Agencies* at: <http://www.nepa.noaa.gov/distributionguide.pdf> for more guidance on distribution and timing.

For both **EAs and EISs** all documents transmitted to the EPA need to be bound. For distribution to other agencies and the public, CD copies are generally acceptable with hard copies available upon request. It is also acceptable to send a postcard to public parties asking if they want to receive a copy of the document and in what type of media. Posting EAs and EISs on the internet, in addition to the mailings, is also acceptable.

5.11 Administrative Record

Records management is important for two reasons: first to satisfy legal requirements and second to enable assembly of documents in litigation. The concept of an administrative record comes from the judicial review section of the Administrative Procedure Act (APA).

The administrative record should consist of relevant and significant documents considered by the NOAA decision-maker when making the decision. If the document is irrelevant or insignificant, it should not be included in the administrative record. The following types of information should be included in an administrative record:

- Documents relied on by the decision-maker, or incorporated by reference in documents relied on by the decision-maker, whether or not those documents support the final agency decision.
- Background documents that help explain the context in which the decision was made.

- Comments received during the public review process from other agencies and the public.
- NOAA's responses to comments received during the public review process.
- Summaries of meetings with the public to discuss the proposed action.

6.0 OTHER TYPES OF NEPA DOCUMENTATION

There are special types of NEPA documents that are adaptations of or modifications to the basic EAs and EISs. Discussed below are supplemental EAs and EISs, programmatic EAs and EISs, tiering, adoption of another agency's NEPA documents, and applicant-triggered NEPA documents.

6.1 Supplemental EAs and EISs

A Supplemental EA or EIS is prepared to amend an original EA or EIS when a significant change in the action is proposed beyond the scope of environmental review in the original EA or EIS, or when significant new circumstances or information arises that could affect the proposed action and its environmental impacts. Supplemental EISs may also be necessary when significant changes to an action are proposed after an FEIS has been released to the public ([NAO 216-6 Section 4.01y](#)). A supplement may be prepared for an FEIS or a DEIS.

When a supplemental document is prepared, the original EA or EIS should be incorporated by reference (refer to Section 5.4 of this handbook for more information regarding incorporation by reference). Supplemental documents should be prepared in the same manner as normal documents with a draft and final stage and include an NOI in the *Federal Register*. A scoping process is not required for Supplemental documents, but may be appropriate depending on the reason for the supplement.

6.2 Programmatic EAs and EISs

[NAO 216-6](#) and [CEQ regulations 40 CFR 1500.4\(i\)](#) encourage the use of program, policy, or plan EAs and EISs (programmatic EAs and EISs) to eliminate repetitive discussion of similar issues. This streamlining procedure can have two components; a programmatic review document coupled with project-specific review documents that are more focused in scope (also known as “tiering”).

Programmatic EAs and Programmatic EISs may be used to streamline NEPA compliance for broad categories of activities conducted, funded, or authorized by NOAA. [NAO 216-6 Section 5.09a](#) states that a programmatic environmental review should analyze the broad scope of actions within a policy or programmatic context by defining the various programs and analyzing the policy alternatives under consideration and the general environmental consequences of each. Specific actions that are within the program or under the policy should be analyzed through project-specific environmental review documents. A project-specific EA or EIS summarizes the issues discussed in the broader statement with respect to the specific action and incorporate discussion from that environmental review by reference. The principal discussion should concentrate on the issues specific to the subsequent action.

It is important to note that the completion of a Programmatic EA or Programmatic EIS does not replace the need for project-specific environmental reviews. Programmatic documents merely serve to avoid duplicative statements that may result from completing many individual project-

specific environmental reviews. Also, programmatic documents do not necessarily lead to tiered NEPA documents (refer to Section 6.3 of this handbook for information regarding tiering).

Refer to the NOAA, December 11, 2001, guidance memo, *Guidance on Programmatic Environmental Impact Statements* at http://www.nepa.noaa.gov/progr_GC_guidance.pdf for more information regarding programmatic documents.

6.3 Tiering of NEPA Documents

[NAO 216-6 Sections 4.01z and 5.09c](#) define tiering as a stepped approach to environmental review under NEPA. Tiering involves the review of a broad-scale agency action (such as a national program or policy) in a general EA or EIS with subsequent more focused environmental reviews (such as regional or area-wide program environmental reviews or project-specific environmental reviews) that incorporate by reference the general discussions in the broad environmental review and concentrate solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of environmental reviews is: a) from a program, plan, or policy EA or EIS to a program, plan, or policy statement or analysis of lesser scope to a project-specific environmental review; or b) from an EA or EIS on a specific action at an early stage to a supplement or a subsequent environmental review at a later stage. Tiering in such cases is appropriate and encouraged because it helps the lead agency focus on the issues that are ripe for decision and exclude from consideration issues already addressed or those that are premature for review.

Refer to the 1983 guidance memo from CEQ, *Guidance Regarding NEPA Regulations* at: <http://ceq.eh.doe.gov/nepa/regs/1983/1983guid.htm> for more information regarding tiering.

6.4 Adopting Other Agency NEPA Documents

[CEQ regulations 40 CFR 1506.3](#) and [NAO 216-6 Section 5.09f](#) encourage NOAA programs to adopt NEPA analyses and documents prepared by other agencies when NOAA's action is related to the other agency's action, and provided the EA or EIS meets NEPA's standards. If NOAA wants to adopt another agency EA or EIS, NOAA must assess and ensure the legal sufficiency of the initial analysis for its purposes.

Figure 13 outlines the general steps to adopt another Federal agency's NEPA document. These steps and others are included in the NOAA NEPA Coordinator's guidance memo, *Guidance on Adopting NEPA Documents Prepared by Other Federal Agencies* at: <http://www.nepa.noaa.gov/adoptionguide.pdf>.

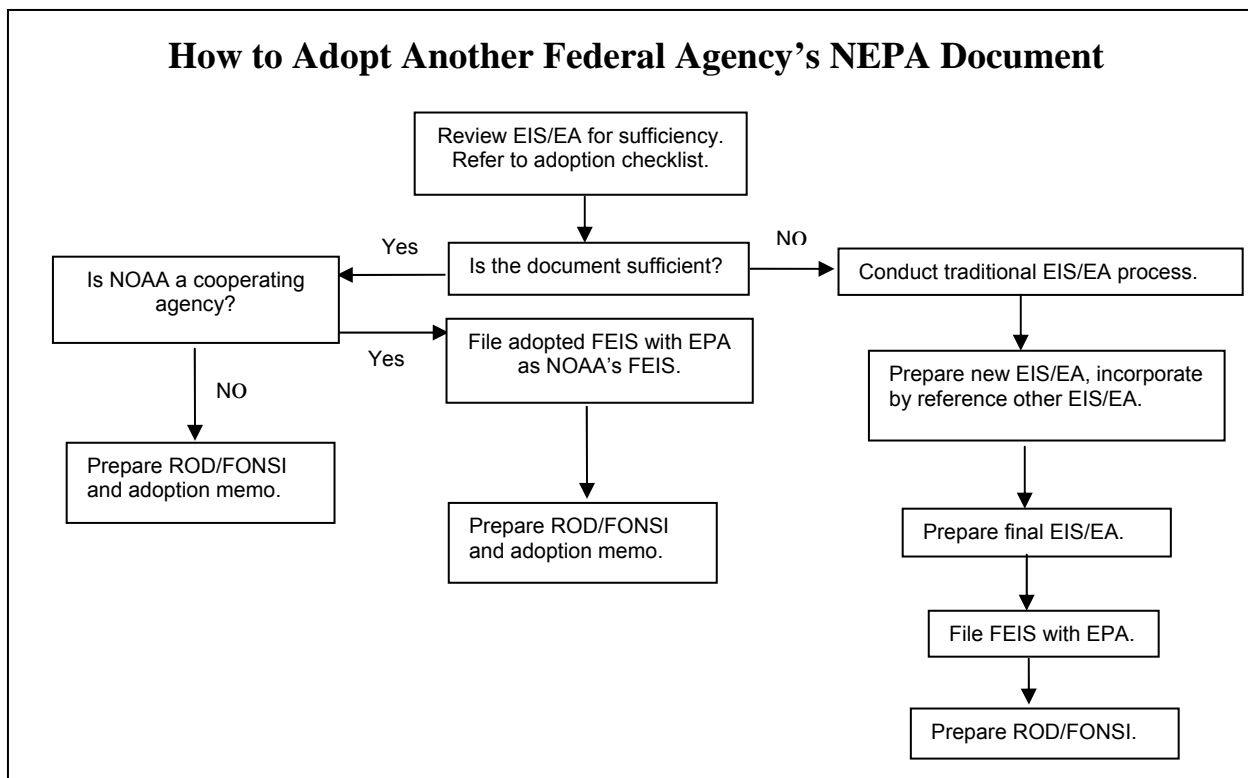


Figure 13. How to Adopt Another Federal Agency's NEPA Document.

6.5 Applicant-Triggered NEPA Documents

In some circumstances NOAA actions are triggered by an applicant for a permit, license, or other form of approval. In other circumstances the action is triggered by a grant application for funding. These actions are major Federal actions and are subject to NEPA. The type of NEPA document or level of analysis required will vary depending on the elements of the activity being proposed by the applicant.

[NAO 216-6 Section 4.01b](#) defines applicant as:

Any party who may apply to NOAA for a Federal permit, funding, or other approval of a proposal or action and whose application should be accompanied by an environmental analysis. Depending on the program, the applicant could be an individual, a private organization, or a Federal, state, tribal, territorial, or foreign governmental body. RFMCs are not considered applicants because of their unique status under Federal law.

Note that **Regional Fishery Management Councils are not considered applicants** because of their unique status under Federal law. NOAA takes full responsibility for EAs and EISs submitted by them.

Guidelines to ensure NEPA compliance when the action is triggered by an applicant include:

- NOAA programs should take steps to make sure that applicants are aware of NOAA's NEPA requirements before they apply for a permit, grant, etc. For example, grant programs that issue requests for proposals (RFP) should indicate in the RFP that the applicant should include with their application information about the environmental impacts of their proposal.
- After NOAA receives an application, NOAA should work with the applicant to assess the environmental impacts and determine the level of NEPA analysis (CE, EA, or EIS) that will be required.
- NOAA cannot issue permits or award grants until after the appropriate NEPA document has been prepared.
- If NOAA determines that the issuance of a grant, permit, etc. to an applicant will qualify for a CE, the RPM should prepare a CE memo and include it with the administrative record for the permit or grant.
- If NOAA determines that an EA and FONSI will be required before it can issue a permit, grant, etc., NOAA should request the applicant to submit the necessary information for NOAA to prepare the EA. In some cases, NOAA may ask the applicant to prepare the EA.
- If an EIS will be required, the applicant will be required to submit the necessary information for NOAA to prepare the EIS.
- Applicants cannot directly prepare EISs ([40 CFR 1506.5\(c\)](#)).
- The applicant may decide to use a third-party contractor with no vested interests in the project to prepare the **EIS** for subsequent NOAA approval. The applicant cannot select the EIS contractor, NOAA is required to select the contractor ([40 CFR 1506.5\(c\)](#)). Normally, the applicant and NOAA work collaboratively to make this selection, but NOAA remains responsible for the final selection. For **EA** preparation, CEQ regulations do not require that Federal agencies solely select a contractor. (Refer to Section 10.5 of this handbook for more information regarding working with a contractor).
- Regardless of the level of analyses required to take action on a permit, grant or other application, NOAA is wholly responsible for the content and accuracy of the NEPA document and must make its decision based on its independent review of an applicant- or third party- prepared EA or a contractor-prepared EIS.

7.0 OTHER LEGAL REQUIREMENTS

[CEQ regulations 40 CFR 1500.2 and 40 CFR 1502.25](#) encourage related environmental laws, rules, regulations, and Executive Orders (EO) to be integrated concurrently to the fullest extent possible in EAs and EISs. Brief explanations of how the NEPA process has complied with these legal requirements should be presented in a chapter of the EA or EIS.

This section of the handbook briefly describes legal requirements that are usually addressed in a NEPA document, and that may affect how NOAA takes certain actions. **This is not to be used as the definitive source for information about these requirements or how to comply with them.** This section of the handbook should be used as a general reference source for general information about the requirement; to find suggestions on how to integrate compliance with each into NEPA analyses; and to find out where to get more specific information about the requirement. Additional legal requirements may be applicable to certain projects.

The following Executive Orders and Statutes have websites and additional references to view for more information. In addition, NOAA NEPA Coordinator Staff in PPI are available to answer any questions regarding integration of the Executive Orders and Statutes with the NEPA process.

7.1 Executive Order Requirements

7.1.1 Executive Order 12114 - Environmental Effects Abroad

[EO 12114](#) extends the purpose of NEPA abroad by requiring Federal agencies to consider the environmental effects of major Federal actions outside of the United States. Therefore, in some circumstances, NOAA's responsibilities may extend beyond the Exclusive Economic Zone.

- Download [EO 12114](#) at: <http://tis.eh.doe.gov/nepa/tools/guidance/Guidance-PDFs/iii-2.pdf>.
- Refer to [NAO 216-6 Section 7.01](#).

7.1.2 Executive Order 12866 - Regulatory Planning and Review

[EO 12866](#) requires Federal agencies to consider socioeconomic impacts during rulemaking. Some requirements of EO 12866 overlap with NEPA.

- Download [EO 12866](#) at:
http://www.archives.gov/federal_register/executive_orders/pdf/12866.pdf.
- Contact your Office of General Counsel for more information regarding EO 12866.
Refer to <http://www.gc.noaa.gov/offices.html> for General Counsel contact information.

7.1.3 Executive Order 12898 - Environmental Justice

[EO 12898](#) requires Federal agencies to consider the impacts of their actions on minority and low-income populations.

- Download [EO 12898](#) at: <http://www.nepa.noaa.gov/eo12898.pdf>
- Refer to [NAO 216-6 Section 7.02](#).
- Refer to CEQ's, *Environmental Justice Guidance Under the NEPA* at: <http://ceq.eh.doe.gov/nepa/regs/ej/justice.pdf>.
- Refer to EPA's website at: <http://www.epa.gov/compliance/environmentaljustice/index.html>.

7.1.4 Executive Order 13089 - Coral Reef Protection

[EO 13089](#) requires Federal agencies whose actions may affect U.S. coral reef ecosystems to:

- a) Identify their actions that may affect U.S. coral reef ecosystems.
 - b) Utilize their programs and authorities to protect and enhance the conditions of such ecosystems.
 - c) To the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems.
- Download [EO 13089](#) at: <http://ceq.eh.doe.gov/nepa/regs/eos/eo13089.html>.
 - Refer to [NAO 216-6 Section 7.04](#).
 - Refer to <http://www.coralreef.gov/> and <http://www.coralreef.noaa.gov/> for information regarding coral reefs.
 - Contact the NOAA Coral Reef Conservation Program at (301) 713-3066.

7.1.5 Executive Order 13112 - Invasive Species

[EO 13112](#) requires Federal agencies to use authorities to prevent introduction of invasive species, respond to and control invasions in a cost effective and environmentally sound manner, and to provide for restoration of native species and habitat conditions in ecosystems that have been invaded.

- Download [EO 13112](#) at: <http://ceq.eh.doe.gov/nepa/regs/eos/eo13112.html>.
- Refer to <http://www.anstaskforce.gov/> for information regarding invasive species.

7.1.6 Executive Order 13158 - Marine Protected Areas

[EO 13158](#) requires Federal agencies to identify actions that affect natural or cultural resources that are within a marine protected area (MPA). It further requires Federal agencies, in taking such actions, to avoid harm to the natural and cultural resources that are protected by an MPA.

- Download [EO 13158](#) at: <http://ceq.eh.doe.gov/nepa/regs/eos/eo13158.html>.
- Refer to <http://www.mpa.gov> for information regarding marine protection areas.
- Contact the Marine Protected Areas Center at (301) 713-3100.

7.2 Statutory Requirements

7.2.1 Administrative Procedure Act

The [Administrative Procedure Act \(APA\)](#) requires public disclosure on Federal rulemaking efforts and other actions that have the effect of rulemaking. This requirement has a stepped process, similar to NEPA, where rules are published first in draft form. After the public has had an opportunity to submit comments on the proposed rule, a final rule is published. The concept of an administrative record comes from the judicial review section of the APA.

- Download the [Administrative Procedure Act](#) at:
http://www.archives.gov/federal_register/public_laws/acts.html
- Contact your Office of General Counsel for more information regarding APA. Refer to <http://www.gc.noaa.gov/offices.html> for General Counsel contact information.

7.2.2 Data Quality Act

The Data Quality Act requires the Director of the Office of Management and Budget to issue guidelines to Federal agencies regarding the assurance of quality, objectivity, utility, and integrity in information (including statistical information) disseminated by Federal agencies.

- Refer to <http://www.noaanews.noaa.gov/stories/iq.htm> for NOAA's Guidelines regarding the Data Quality Act.

7.2.3 Coastal Zone Management Act- Federal Consistency

The [Coastal Zone Management Act \(CZMA\)](#) requires that Federal actions that will have reasonably foreseeable effects on the land or water uses or natural resources of a state's coastal zone must be consistent with Federally approved State Coastal Management Programs. This generally involves conducting consultation with affected State Coastal Management Programs.

- Download the [Coastal Zone Management Act](#) at:
http://coastalmanagement.noaa.gov/czm/czm_act.html.
- Refer to http://coastalmanagement.noaa.gov/pcd/federal_consistency.html for information regarding coastal zone management.
- Contact NOAA's Office of Ocean and Coastal Resource Management at (301) 713-3155.

7.2.4 Endangered Species Act Section 7

[Section 7 of the Endangered Species Act](#) reads as follows:

SEC. 7. (a)(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to

be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

If NOAA proposes an action that may affect ESA listed species, it must initiate section 7 consultation. Staff responsible for ensuring NEPA compliance may be involved in the section 7 consultation. Sections of a NEPA document, such as information on the affected environment, may be used in consultation. Section 7 consultation must be completed before the FEIS is completed or the FONSI is signed.

- Download [Section 7 of the Endangered Species Act](http://endangered.fws.gov/esaall.pdf) at: <http://endangered.fws.gov/esaall.pdf>.
- Download to the joint NOAA Fisheries and the U.S. Fish and Wildlife Service handbook, *Procedures for Conducting Section 7 Consultations and Conferences* at: <http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>.
- Contact NOAA Fisheries, Protected Resources at (301) 713-1401.
- Regional section 7 coordinators may also be contacted for more information.

7.2.5 Magnuson-Stevens Act- Essential Fish Habitat

[Section 305\(b\)\(2\) of the amended Magnuson-Stevens Act](#) directs each Federal Agency to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat (EFH) identified under the Magnuson-Stevens Act. Implementing regulations for this requirement are at [50 CFR 600](#).

- Download [Section 305\(b\)\(2\) of the amended Magnuson-Stevens Act](http://www.nmfs.noaa.gov/sfa/magact/) at: <http://www.nmfs.noaa.gov/sfa/magact/>.
- Download [50 CFR 600](http://www.nmfs.noaa.gov/habitat/habitatprotection/efhfinalrule.pdf) at: <http://www.nmfs.noaa.gov/habitat/habitatprotection/efhfinalrule.pdf>.
- Refer to <http://www.nmfs.noaa.gov/habitat/habitatprotection/essentialfishhabitat.htm> for information regarding essential fish habitat.
- Contact NOAA Fisheries, Habitat Protection at (301) 713-4300.

7.2.6 National Historic Preservation Act

The [National Historic Preservation Act \(NHPA\)](#) has two major components that affect the responsibilities of Federal agencies. First, under Section 106 of the NHPA, Federal agencies are to consider the effects of their actions on historic resources that are either eligible for listing or are listed on the National Register of Historic Places. Secondly, Section 110 of the NHPA requires Federal agencies that own or control historic resources to consider historic preservation of historic resources as part of their management responsibilities.

- Download the [National Historic Preservation Act](#) at: <http://www.cr.nps.gov/hps/laws/NHPA1966.htm>.
- Contact your Office of General Counsel for more information regarding the National Historic Preservation Act. Refer to <http://www.gc.noaa.gov/offices.html> for General Counsel contact information.

7.2.7 National Marine Sanctuaries Act

Through the 1992 amendments to the [National Marine Sanctuaries Act](#), Congress added new provisions to assist NOAA's National Marine Sanctuary Program (NMSP) in achieving its mandates. Among them was a new interagency coordination element, Section 304(d) of the NMSA, which requires Federal agencies to engage the NMSP in consultation whenever their actions are likely to destroy, cause the loss, or injure any sanctuary resource. Through the same legislation, Congress required Federal agencies to consult on proposed actions that may affect the Gerry E. Studds Stellwagen Bank National Marine Sanctuary.

- Download the [National Marine Sanctuaries Act](#) at: <http://www.sanctuaries.nos.noaa.gov/natprogram/nplegislation/NMSA.pdf>.
- Contact the National Marine Sanctuary Program at (301) 713-3125.

8.0 COOPERATING AGENCY

There are often times when NOAA is proposing an action that involves another Federal agency. For example, some restoration projects involve the U.S. Army Corps of Engineers. There are also cases where the action involves a state agency, Indian tribe, or local government. In such cases, RPMs must cooperate with other Federal, state and local agencies, and Indian tribes to the maximum extent practical to reduce duplication in document preparation. [CEQ regulations 40 CFR 1501.1\(b\)](#) emphasize cooperative consultation among agencies before an EA or EIS is prepared, rather than submitting adversarial comments on a completed document. When agencies cooperate, responsibilities are often divided among the partners. In this way, NOAA can reduce the amount of resources it must commit by sharing NEPA responsibilities with other agencies.

For more information regarding cooperating agencies refer to the CEQ, January 30, 2002 memo, [*Cooperating Agencies In Implementing The Procedural Requirements Of The National Environmental Policy Act*](#) at:
<http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html>.

8.1 Definition of Cooperating Agency

A cooperating agency may be any agency other than the lead agency which has discretionary authority over the proposed action, jurisdiction by law, or special expertise with respect to the environmental impacts expected from the proposed action ([40 CFR 1508.5](#)).

An agency has discretionary authority if it has the ability to add conditional measures as a part of the proposed action's approval. An agency has jurisdiction by law if it has the power to approve, veto, or finance all or part of the proposed action ([40 CFR 1508.15](#)). An agency has special expertise if it has statutory responsibility, agency mission, or related program experience, but not approval authority with regard to the proposed action ([40 CFR 1508.26](#)).

8.2 Circumstances that Call for Agency Cooperation

According to [CEQ regulations 40 CFR 1501.5\(a\)](#) the following cases call for agencies to cooperate with one another:

If more than one Federal agency either:

- (1) Proposes or is involved in the same action; or
- (2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

8.3 Lead Agency

Where cooperating agencies are involved in the preparation of an EIS, a "lead agency" must be designated to coordinate efforts. According to [CEQ regulations 40 CFR 1501.5\(c\)](#), the agencies involved jointly decide which will be the lead agency. If there is disagreement among the

agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

1. Magnitude of agency's involvement.
2. Project approval/disapproval authority.
3. Expertise concerning the action's environmental effects.
4. Duration of agency's involvement.
5. Sequence of agency's involvement.

Federal, state, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an EIS ([40 CFR 1501.5\(b\)](#)).

8.4 Inviting Other Agencies to be Cooperating Agencies

During scoping (refer to Section 5.2 of this handbook for more information regarding scoping), NOAA must make every effort to identify potential cooperating agencies and formally request their participation in the EIS process. Only agencies meeting the definition of cooperating agencies can be invited to cooperate. For many NOAA actions the following agencies may be appropriate as potential cooperating agencies:

- State wildlife management agencies.
- Tribal governments, when the proposed action is on or near a reservation.
- Other Federal resource agencies with expertise in the environmental issues of NOAA's action (Fish and Wildlife Service, Forest Service).
- Agencies from which we need a permit (Army Corps of Engineers, EPA).
- Agencies that may contribute funding or personnel to the action (National Science Foundation).

Entities that cannot participate as cooperating agencies, but can participate in the process through scoping and public commenting include:

- Private companies.
- Individuals.
- Fishery Management Councils.
- Non-governmental organizations.
- Universities and other academic institutions (except when acting through and on behalf of states).

8.5 Accepting Other Agency Offers to Cooperate

If NOAA has jurisdiction by law in an action NOAA should participate as a cooperating agency. If, however, NOAA determines that its resource limitations preclude any involvement as a cooperating agency, NOAA must reply to the lead agency in writing, providing the reasons for declining the request, and submit a copy of that reply to CEQ. If NOAA has special expertise with respect to any environmental issue that should be addressed in the EIS, it may be a cooperating agency upon request of the lead agency ([40 CFR 1501.5](#) and [40 CFR 1501.6](#)).

If the lead agency has not requested NOAA's participation, NOAA may request a lead agency to designate NOAA as a cooperating agency,

The following should be considered before accepting or declining an offer from a lead agency to cooperate:

- Being a cooperating agency does not mean NOAA agrees with the other agency's position on an action. NOAA's decision may differ from the other agency's decision even based on the same EIS. However, if NOAA adopts the EIS, NOAA must believe the impact analysis within the EIS is adequate.
- If NOAA would have to prepare an EIS for the same or related action, being a co-lead or cooperating agency could allow NOAA to share some of the workload with the lead agency.
- If NOAA's situation changes during an EIS process for which it is a cooperating agency, NOAA may withdraw from the process.
- CEQ encourages agencies to cooperate. If NOAA declines an invitation to be a cooperating agency and it has jurisdiction over the action, NOAA must have good rationale and provide a written explanation to CEQ.
- NOAA can cooperate at different levels of participation. For example, if staff time and resources are limited, NOAA may choose to cooperate by reviewing drafts and providing advice and recommendations. If NOAA needs to be more involved, it may conduct studies to support the EIS preparation or draft certain sections of the document.

9.0 COMMENTING ON OTHER AGENCIES' NEPA DOCUMENTS

NOAA has a responsibility to review and comment on EISs (and EAs when aware of them) prepared for actions that:

- Affect NOAA resources.
- Impact NOAA's statutory mandate and mission.
- Are under NOAA's jurisdiction.
- Are within NOAA's technical expertise.

The following sections provide guidance to NOAA staff preparing comments on another agency's EIS or EA.

9.1 Developing Comments

NOAA's primary goal of providing comments on NEPA documents is to have a positive influence on other Federal agency plans and projects and to ensure proactive consideration, protection, and mitigation of impacts to NOAA's trust resources ([NAO 216-6 Section 5.10a](#)).

[NAO 216-6 Section 5.10](#) and CEQ regulations [40 CFR 1503.3](#) provide specific guidelines on how agencies should develop comments to other agencies during the NEPA process. [NAO 216-6 Sections 5.10b.1 through 5.10b.3](#) provide the following advice in this regard:

1. Comments should be restricted to areas within the reviewer's competence, and conclusions must be supportable by facts. Each comment should be treated as a specialized piece of scientific writing that must stand up under scrutiny by the reviewer's peers.
2. Comments of an editorial nature, opinions on the merit of the project, or phrasing that reveals the personal bias of the reviewer must be scrupulously avoided.
3. The reviewer should:
 - (a) call attention to inadequate or missing data that makes it difficult or impossible to evaluate the conclusions reached in the DEIS;
 - (b) specify studies or types of information which will supply answers to the technical questions that the reviewer has raised;
 - (c) recommend modifications to the proposed action and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts;
 - (d) discuss environmental interrelationships between the proposed action and NOAA's trust resources that should be included in the EIS;

- (e) outline the nature of any particularly appropriate monitoring of the environmental effects during any phase of the proposed project; and
- (f) suggest ways of assisting the sponsoring agency to establish and operate monitoring systems.

9.2 Expressing Comments

Comments and concerns to other agencies on EAs or EISs should be coordinated through the NOAA NEPA Coordinator to ensure any conflicts are resolved or explained in the final comment letter to the other agency ([NAO 216-6 Section 2.02\(a\)\(6\)](#)). This is especially crucial for EISs that may have significant impacts on NOAA trust resources or involve comments from more than one program.

Individual NOAA programs should consult with the NOAA NEPA Coordinator as soon as they become aware of another agency's EA or EIS for which it would like to submit comments. When only one NOAA program is submitting comments, the NOAA NEPA Coordinator may instruct the program to submit its comments individually. However, in most cases, the NOAA NEPA Coordinator will submit one NOAA-wide comment letter, incorporating comments from all affected NOAA programs.

9.3 Elevating Comments that are Not Satisfied

When NOAA comments on other lead agency documents it is to cause real change in the action, alternatives, or impacts. NOAA expects that all comments will be addressed. In some cases, however, the lead agency may not address NOAA's comments adequately or not at all. When this occurs, it should be immediately brought to the NOAA NEPA Coordinator's attention in PPI. The next step will be to meet with the other lead agency to clarify and further discuss NOAA's comments. If, after attempting to resolve issues in this manner, NOAA's comments are still unaddressed, NOAA may refer the matter to CEQ.

Environmental referrals should be made to the CEQ only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency ([40 CFR 1504.2](#)). Referrals to CEQ are a last resort and used only in the most serious of cases. Government wide, only 27 referrals were made between 1974-2001.

[CEQ regulations 40 CFR 1504](#) and [NAO 216-6 Section 5.11](#) outline the referral process.

10.0 ADDITIONAL INFORMATION

10.1 Points of Contact for NEPA Questions

If you have questions regarding NEPA you may contact the NOAA NEPA Coordinator or the NOAA NEPA Coordinator Staff at:

Program Planning and Integration
SSMC3 Room 15609
1315 East West Highway
Silver Spring, MD 20910
Phone: 301-713-3318
Fax: 301-713-0585

Contact the appropriate region for points of contact for the Regional NMFS NEPA Coordinators, including the NMFS NEPA Coordinator in NOAA Headquarters.

Line and Program Office of General Counsel representatives and the Office of General Counsel for Environmental Compliance and Safety are also available. Refer to <http://www.gc.noaa.gov/offices.html> for General Counsel contact information.

10.2 The NOAA NEPA Website

The [NOAA NEPA website](http://www.nepa.noaa.gov) at <http://www.nepa.noaa.gov> provides information about NEPA specific to NOAA.

The website has links to Department of Commerce and NOAA NEPA guidance, including the Department of Commerce Administrative Order 216-6 and NAO 216-6. The website has various tools such as guidance memos. Tools are also available for NOAA Financial Assistance Awards, including the CE checklist and the CE memorandum template. NEPA regulations and reference information are also available.

10.3 Common Errors Made During the NEPA Process

The following are some common errors made during the NEPA process:

- Neglecting to publish an NOI before beginning the EIS process.
- Not preparing a ROD.
- Not specifying a clear scope of work for a contractor hired to prepare a NEPA document.
- Trying to force NEPA compliance into a timeframe that is too short.
- Allowing an applicant to select the EIS contractor without NOAA oversight.
- Informing an applicant that it can prepare its own EIS.
- Failing to document the NEPA process in an administrative record.
- Committing NOAA to a particular course of action (through money spent or verbal commitments) before completing the NEPA process.

10.4 Five Common Misconceptions About NEPA

Misconception 1: *NEPA is purely procedural and is just another hurdle NOAA must jump over to do its jobs.*

Reality: While NEPA and CEQ regulations do require NOAA to follow certain procedures, NEPA is NOT purely procedural. The goals of NEPA represent concepts with which NOAA, as a resource protection and scientific agency, should closely identify. NEPA fosters the idea that informed decisions are better than uninformed decisions. NEPA allows NOAA to be aware of the environmental impacts of its actions before making decisions to proceed. NEPA is designed to ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.

Misconception 2: *If NOAA does not comply with NEPA, nothing will happen.*

Reality: If NOAA neglects its NEPA responsibilities its decision can be challenged in a court of law. Courts can stop NOAA actions from taking place if NEPA was not conducted properly. Where the NEPA documentation is sufficient, NOAA does not lose challenges on NEPA grounds.

Misconception 3: *NEPA takes too long, and there is not enough time to do it.*

Reality: Many NOAA actions qualify for CEs, which generally take a day or two to complete. Other NOAA actions can be addressed in an EA, which may be completed in one to six months. For the actions NOAA that require EISs, NOAA should plan ahead, providing about one to two years lead time to complete the EIS. If NOAA does not plan ahead, EISs and even EAs may take longer. If NOAA fails to comply with NEPA altogether, it may not be able to take action at all.

Misconception 4: *If NOAA is in a permitting or grant-awarding role, there is no NOAA action for which to prepare a NEPA analysis.*

Reality: Issuance of permits and awarding grants that explicitly include Federal involvement or oversight are major Federal actions and are subject to NEPA. In both cases, at minimum a CE memo will be required. The level of NEPA documentation required for grants and permits depends on the impacts of the activity for which the permit is issued or grant awarded. Grants for independent actions over which the agency has no discretion, oversight, authority or involvement, however, do not require NEPA review.

Misconception 5: *If another Federal agency has prepared an EA or EIS for an action with which NOAA is involved, NOAA does not have to conduct the NEPA process.*

Reality: Each Federal agency involved in an action is required to comply with NEPA. In some cases, NOAA may be able to adopt another agency's NEPA document (refer to Section 6.4 of this handbook for information regarding adopting other agency NEPA documents). However, there are steps NOAA must go through in this case to ensure its action is adequately covered.

10.5 Hiring a Contractor to Prepare NOAA's NEPA Documents

NOAA must independently review contractor-prepared NEPA documents and analyses and take full responsibility for their content and accuracy. If NOAA decides to hire a contractor to prepare a NEPA document, consider the following guidelines:

- Consider the experience and expertise of the individuals within a firm that will be assigned to work on NOAA's project.
- Write a scope of work that is as specific as possible and clearly outlines NOAA's requirements and expectations, including tasks the contractor should NOT be expected to accomplish.
- Ensure conflict of interest disclosures are provided.
- Stay involved in the contractor's product as much as possible and provide interim guidance if the contractor is headed in the wrong direction.

If NOAA is accepting a NEPA document from a contractor being paid by an applicant for a permit or grant consider the following:

- [CEQ regulations 40 CFR 1506.5\(c\)](#) require NOAA to choose the contractor.
- Ensure conflict of interest disclosures are signed by each contractor.
- Include contractor original signed statements in the administrative record.
- Ensure that the contractor understands the unique third-party arrangement. Although they are paid by the applicant, effectively the contractor works on behalf of NOAA. As such, NOAA should retain full access to all contractor activities, and all tasks should be approved by NOAA, with the exception of the budget.
- Conduct an internal scoping session prior to initiating public scoping. During this meeting identify roles and responsibilities of the contractor, applicant, and NOAA, and approve the Scope of Work if one was not prepared during the bidding process.
- A third-party may draft a ROD or FONSI, but NOAA is ultimately responsible for these documents.

10.6 NEPA Training

If your position requires a sound understanding of NEPA, consider taking advantage of available NEPA training. Formal NEPA training is not only advantageous for novices to the NEPA field,

but can also help more experienced individuals stay up to date on the latest practices and interpretations.

10.6.1 NOAA Training

NOAA periodically conducts NEPA training seminars throughout its offices around the country. During these training seminars instructors discuss NEPA issues specific to NOAA programs. Most training of this type is geared toward fishery management issues, but NEPA training for other NOAA programs can be arranged through PPI. If several people in a program office need to be trained in NEPA, staff from the NOAA NEPA Coordinator's office in PPI are available to conduct a one or two day training seminar on NEPA basics.

To find out about the latest NEPA training in your region, visit the NOAA NEPA website at: www.nepa.noaa.gov.

10.6.2 Non-NOAA Training

In addition to NOAA NEPA training opportunities, there are many institutions throughout the country that offer year-round NEPA courses. NOAA is not endorsing or advertising any of the following programs.

Duke University Environmental Leadership Program: <http://www.nicholas.duke.edu/del/>.

Utah State University NEPA Certificate Program: <http://www.cnr.usu.edu/policy/nepa.html>.

Dr. Larry Cantor (University of Oklahoma) NEPA training:
<http://www.eiatraining.com/index.htm>.

The Shipley Group: http://www.shipleygroup.com/pages/env_home.html.

11.0 REFERENCES

40 CFR 1500-1508, Council on Environmental Quality implementing regulations for NEPA, http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm.

42 U.S.C 4321-4375, The National Environmental Policy Act, <http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm>.

CEQ, *Guidance Regarding NEPA Regulations*, 1983, <http://ceq.eh.doe.gov/nepa/regs/1983/1983guid.htm>

CEQ Guidance Memo, *Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping*, April 30, 1981, <http://ceq.eh.doe.gov/nepa/regs/scope/scoping.htm>.

CEQ Report, *Considering Cumulative Effects Under the National Environmental Policy Act*, <http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>.

NEPA's Forty Most Asked Questions, <http://ceq.eh.doe.gov/nepa/regs/40/40p3.htm>.

NAO 216-6, http://www.nepa.noaa.gov/NAO216_6_TOC.pdf.

NOAA Guidance Memo, *Guidance on Adopting National Environmental Policy Act Documents Prepared by Other Federal Agencies*, December 17, 2003, <http://www.nepa.noaa.gov/adoptionguide.pdf>.

NOAA Guidance Memo, *Guidance on Distribution of Draft and Final Environmental Impact Statements to Commenting Agencies*, October 14, 2003, <http://www.nepa.noaa.gov/distributionguide.pdf>.

NOAA Guidance Memo, *Legal Guidance on Determining Related Actions and Developing Reasonable Alternatives for Inclusion in a Single EIS*, December 16, 2002, http://www.nepa.noaa.gov/reasonable_alts.pdf.

12.0 ATTACHMENTS

Attachment A

Categorical Exclusion Checklist

Attachment B

Categorical Exclusion Memorandum Template

ATTACHMENT A CATEGORICAL EXCLUSION CHECKLIST

The CE Checklist for Non-Construction NOAA Grants is available at:

http://www.nepa.noaa.gov/CE_checklist_tool.pdf.

Categorical Exclusion Checklist for Non-Construction National Oceanic and Atmospheric Administration Grants

The purpose of this checklist is to assist National Oceanic and Atmospheric Administration's (NOAA) responsible program managers (RPMs) in determining if the grant(s) they are proposing qualifies for categorical exclusion status under NOAA's National Environmental Policy Act (NEPA) guidelines. Normally, NOAA grants qualify for categorical exclusion from NEPA requirements when the environmental effects are minor or negligible. However, as stated in NOAA's guidelines for implementing NEPA (NAO 216-6; <http://www.rdc.noaa.gov/~nao/216-6.html>) at 5.05.c, under certain conditions, preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required for proposed grants when 1) a grant program is entirely new; 2) under extraordinary circumstances in which normally excluded actions may have a significant environmental impact; or 3) potential impacts associated with the grant are highly controversial. By answering the questions in this checklist, the RPM can determine whether the effects of the grant qualify for categorical exclusion, or require further NEPA documentation in the form of an EA or an EIS. This checklist should be filled out for a grant which is not automatically determined to require an EA or EIS in order to establish compliance with administrative record requirements regarding categorical exclusions (CEs).

1. Identify the NOAA Grant Project and Program: _____
_____.
2. Attach a brief, but specific project description, including: the grant/award recipient, geographical location, and the scope of project(s). Does the grant involve any federal permits, or other federal agency direct involvement, activity, oversight, or funding?
Yes () No ()
3. Is this an entirely new NOAA grant program? Yes () No ()
4. Will this NOAA grant establish a precedent or represent a decision in principle about future grant and award actions with potentially significant environmental effects?
Yes () No ()

5. Have a number of similar grant actions been considered? Yes () No ()

If yes, although the proposed action's effects may be individually insignificant, will its addition to existing and reasonably foreseeable actions result in cumulatively significant impacts? Yes () No ()

6. Could this NOAA grant have significant effects on public health or safety? Yes () No ()

Will the proposed action:

- Create high levels of noise for an extended period of time? Yes () No ()
- Have long or short term aesthetic effects, e.g., visual effects or effects on scenery? Yes () No ()
- Require large amounts of outdoor lighting or create any unusual odors? Yes () No ()
- Require large amounts of water or electricity for an extended period or time? Yes () No ()
- Have long or short term effects on the transportation infrastructure, or create a significant increase in local traffic? Yes () No ()

7. Could this NOAA grant have significant adverse impacts on any geographic area(s) with unique characteristics? Areas to consider include coral reefs, marine protected areas, marine sanctuaries, essential fish habitat, historic or cultural resources, park or refuge lands, wild or scenic rivers, wetlands, or ecologically significant or critical areas, including those listed on the National Register of Natural Landmarks, or listed or eligible for listing on the National Register of Historic Places. Yes () No ()

Will the proposed action:

- Degrade or disturb coral reefs? Yes () No ()
- Degrade or disturb previously undisturbed areas? Yes () No ()
- Affect any areas such as wetlands and flood plains? Yes () No ()
- Disturb archaeological or historic resources? Yes () No ()

8. Could this NOAA grant have highly uncertain and potentially significant environmental effects or involve unique or unknown risks? Yes () No ()

Will the proposed action:

- Potentially result in the introduction or spread of a non-indigenous species? Yes () No ()
 - Involve aquaculture activities that could result in the introduction or spread of invasive or non-indigenous species? Yes () No ()
 - Significantly impact water resources such as surface or groundwater? Yes () No ()
 - Significantly contribute to water degradation or impairment? Yes () No ()
 - Generate large amounts of hazardous waste or any toxic waste? Yes () No ()
 - Emit dangerous levels of ionizing or non-ionizing radiation? Yes () No ()
 - Result (directly or indirectly) in the generation of large amounts of air pollution? Yes () No ()
9. Could this NOAA grant have adverse effects on species listed or proposed to be listed as Endangered or Threatened, or have adverse effects on designated critical habitats? Yes () No ()
10. Will this grant threaten to violate a Federal state, local, or tribal law imposed for the protection of the environment? Yes () No ()
11. Will this NOAA grant have highly controversial environmental effects (i.e, are the effects likely to be subject to serious scientific dispute)? Yes () No ()

IF YES WAS CHECKED FOR ANY OF THE ITEMS ABOVE: Please list the item number, provide additional information about anticipated effects, and contact the NEPA Coordinator in PPI (301-713-3318) to discuss alternatives for providing NEPA documentation.

IF NO WAS CHECKED FOR ALL OF THE ITEMS ABOVE: The grant activity may qualify for a Categorical Exclusion (CE). Please review the categories for CEs below and select the applicable category.

APPLICABLE? YES/NO	CATEGORY	DESCRIPTION
	Research NAO 216-6 6.03.c.3(a)	Programs or projects of limited size and magnitude or with only short-term effects on the environment and for which any cumulative effects are negligible. Examples include natural resource inventories and environmental monitoring programs conducted with a variety of gear (satellite and ground based sensors, fish nets, etc.) in water, air, or land environs. Such projects may be conducted in a wide geographic area without need for an environmental document provided related environmental consequences are limited or short-term.
	Financial and Planning Grants NAO 216-6 6.03.c.3(b)	Financial support services and programs, such as federal or state loans or grants, (e.g., Saltsonstall-Kennedy grant, a fishery loan or grant disbursement under the Fishermen's Contingency Fund or Fisheries Obligation Guarantee Program), where the environmental effects are minor or negligible, and no environmental consequences are anticipated beyond those already analyzed in establishing such programs, laws or regulations. New financial support services and programs should undergo an environmental analysis at the time of conception to determine if a CE could apply to subsequent actions.
	Minor Project Activities NAO 216-6 6.03.c.3(c)	Projects where the proposal is for a minor amelioration action such as planting dune grass or for minor project changes or minor improvements to an existing site (e.g., fences, roads, picnic facilities, etc.), unless the project's impacts in conjunction with past, present or reasonably foreseeable future actions may result in a significant impact the human environment (40 CFR 1508.7).
	Pre-Proposal Actions 40 CFR 1508.23	Planning actions before a proposal exists do not require NEPA analysis. A "proposal" exists at that stage in the development of an action when a NOAA organization has a goal and begins its decision-making process, including consideration of environmental impacts, toward realization of that goal.

	<p>Administrative or Programmatic Functions NAO 216-6 6.03.c.3(d)</p>	<p>The following NOAA programmatic functions that hold no potential for significant environmental impacts qualify for a CE:</p> <ul style="list-style-type: none"> · Program planning and budgeting · Mapping, charting and surveying services · Ship support, ship and aircraft operations · Fishery financial support services · Grants for fishery data collection activities · Basic and applied research and research grants, except as provided in Section 6.03.b of NAO 216-6 · Enforcement operations · Basic environmental services and monitoring, such as weather observations, communications, analyses, and predictions · Environmental satellite services · Environmental data and information services · Air quality observations and analysis · Support of national and international atmospheric and Great Lakes research programs · Executive direction · Administrative services · Administrative support advisory bodies
	<p>Regulations Implementing Projects or Plans NAO 216-6 6.03.c.3(i)</p>	<p>Routine operations and routine maintenance, preparation of regulations, Orders, manuals, or other guidance that implement, but do not substantially change these documents, or other guidance; policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature, or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case; activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public; actions with short term effects, or actions of limited size or magnitude.</p>

	<p>Listing Actions Under Sec. 4(a) of ESA NAO 216-6 6.03.e.3</p>	<p>The following actions may be appropriate for CE:</p> <ul style="list-style-type: none"> · Preparation of recovery plans pursuant to Section 4(f)(1), because such plans are only advisory documents that provide consultative and technical assistance in recovery planning. However, implementation of specific tasks themselves identified in recovery plans may require an EA or EIS depending on the significance of the action (see NAO 216-6 Section 6.03e.2(b) for guidance on NEPA compliance for implementation of recovery actions). · Permits for scientific research or to enhance the propagation or survival of listed species pursuant to Section 10(a)(1)(a) of the ESA (except for permits covered in NAO 6.03e.2(c)). The RPM must also consider the cumulative impact on the listed species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species. · Critical habitat designations where a designation overlaps with listing protections and is unlikely to have a significant effect on the human environment. CEs will not apply for critical habitat designations that include habitat outside the current occupied range of a listed species, the potential for economic and/or other impacts over and above those resulting from the listing exists. · “Low effect” incidental take permits under Section 10(a)(1)(B) of ESA that individually or cumulatively have a minor or negligible effect on the species covered in the habitat conservation plan.
	<p>MMPA NAO 216-6 6.03.f.2</p>	<p>In general, scientific research, enhancement, photography, and public display permits issued under Section 101(a)(1) and 104 of the MMPA, and letters of confirmation for activities conducted under the General Authorization for Scientific Research established under Section 104 of the MMPA qualify for a CE. The RPM must also consider the cumulative impact on the protected species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species. Small take incidental harassment authorizations under Section 101(a)(5)(d), tiered from a programmatic environmental review, are categorically excluded from further review. If such an authorization does not tier from a programmatic environmental review, that action may require an EIS, EA, or CE, based on a case-by-case review.</p>

	<p>Fisheries Management Plans and Plan Amendments NAO 216-6 6.03.d.4</p>	<p>Fisheries management actions may qualify for a CE pursuant to Section 9.03a.3. of NAO 216-6 if the actions individually and cumulatively do not have the potential to pose significant effect to the quality of the human environment. Actions that may receive a CE include:</p> <ul style="list-style-type: none"> · Ongoing or recurring fisheries actions of a routine administrative nature when the action will not have any impacts not already assessed or the RPM finds they do not have the potential to pose significant effects to the quality of the human environment such as: reallocations of yield within the scope of a previously published fisheries management plan (FMP), or fishery regulation, combining management units in related FMP, and extension or change of the period of effectiveness of an FMP or regulation; and · Minor technical additions, corrections, or changes to an FMP. <p>CE determinations for FMPs and FMP amendments require specific documentation. Refer to NAO 216-6 at 6.03c.3d.4 for further instructions.</p>
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ATTACHMENT B CATEGORICAL EXCLUSION MEMORANDUM TEMPLATE

The Categorical Exclusion memorandum template is available at: www.nepa.noaa.gov.

Categorical Exclusion Memorandum Template

MEMORANDUM FOR: The Record

FROM: [Responsible Program Manager]

SUBJECT: Categorical Exclusion for Grant(s) [Title, #]

NAO 216-6, Environmental Review Procedures, requires all proposed projects to be reviewed with respect to environmental consequences on the human environment. This memorandum addresses the applicability of issuing grant(s) [#] to [awardee(s)], of [organization(s)], to conduct the activities described below.

Description of Project(s)

[Identify the project - who, what, when, where. Should be concise paragraph]

Effects of the Project(s)

[Example, for activities in the outdoors environment, note that the project will not have the potential for significant impacts. For research involving data/modeling, note that there is no interaction with the environment. For actions transferring funds (scholarships, fellowships, etc), note that aspect. Should be a concise notation.]

Categorical Exclusion

This project would not result in any changes to the human environment. As defined in Sections 5.05 and [insert appropriate specific categorical exclusion citation; see list on page 3 of CE Checklist for Non-Construction Grants for concise list] of NAO 216-6, this is a [research/fellowship/other...] project of limited size or magnitude or with only short term effects on the environment and for which any cumulative effects are negligible. As such, it is categorically excluded from the need to prepare an Environmental Assessment.